

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

68
5/21/02
90
FILED
HARRISBURG, PA

MAY 20 2002

DARRELL G. OBER,

Plaintiff

v.

PAUL EVANKO, MARK
CAMPBELL, THOMAS
COURY, JOSEPH
WESTCOTT, HAWTHORNE
CONLEY

No. 1:CV-01-0084
(Judge Caldwell)

MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

CIVIL ACTION – LAW

JURY TRIAL DEMANDED

**EXHIBITS TO DEFENDANTS' BRIEF IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
VOLUME 2**

U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

DARRELL G. OBER,	*	
Plaintiff	*	Case No.
vs.	*	1CV-01-0084
PAUL EVANKO,	*	
MARK CAMPBELL,	*	
THOMAS COURY,	*	
JOSEPH WESTCOTT and	*	
HAWTHORNE CONLEY,	*	
Defendants	*	

* * * * *

VIDEOTAPED DEPOSITION OF
THOMAS K. COURY
March 12, 2002

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 VIDEOTAPED
2 DEPOSITION
3 OF
4 THOMAS K. COURY, taken on behalf of
5 the Plaintiff herein, pursuant to the
6 Rules of Civil Procedure, taken
7 before me, the undersigned, Vivian
8 Gratz, a Court Reporter and
9 Commissioner of Deeds in and for the
10 Commonwealth of Pennsylvania, at the
11 offices of Strategic Development
12 Technical Services Center, 2629
13 Market Place, Harrisburg,
14 Pennsylvania, on Tuesday, March 12,
15 2002, beginning at 3:18 p.m.

A P P E A R A N C E S

DON BAILEY, ESQUIRE

4311 North 6th Street

Harrisburg, PA 17110

COUNSEL FOR PLAINTIFF

BARBARA L. CHRISTIE, ESQUIRE

Chief Counsel

Pennsylvania State Police

1800 Elmerton Avenue

Harrisburg, PA 17110

COUNSEL FOR DEFENDANTS

I N D E X

WITNESS: THOMAS K. COURY

EXAMINATION

by Attorney Bailey

7 - 102

CERTIFICATE

103

EXHIBIT PAGE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u> <u>IDENTIFIED</u>
---------------	--------------------	----------------------------------

NONE OFFERED

OBJECTION PAGE

ATTORNEY

PAGE

Christie

85

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THOMAS K. COURY, HAVING FIRST BEEN
DULY SWORN, TESTIFIED AS FOLLOWS:

VIDEOGRAPHER:

Good afternoon, ladies
and gentlemen. Please be
advised the video and audio is
in operation. My name is
Crystal M. Lyde, L-Y-D-E. My
address is 4310 Hillsdale
Road, Harrisburg, Pennsylvania
17112. I've been contracted
by P.R. Video to be the
operator for this deposition.
The case is in the United
States District Court for the
Middle District of
Pennsylvania. The caption is
Darrell G. Ober versus Paul
Evanko, Mark Campbell, Thomas
Coury, Joseph Westcott and
Hawthorne Conley. The docket
number is 1CV-01-0084. The

1 date is March 12th, 2002. The
2 deposition is being held at
3 the Pennsylvania State Police
4 Tech Center, Market Place,
5 Harrisburg, Pennsylvania. The
6 video deposition is being
7 taken on behalf of Plaintiff
8 Darrell Ober and is also being
9 taken stenographically. The
10 witness' name is Tom Coury.
11 The time is 3:18 p.m. Would
12 you raise your right hand for
13 me, please? Please state your
14 name for the record and spell
15 it.

16 MR. COURY:

17 Thomas K. Coury,

18 C-O-U-R-Y.

19 THOMAS K. COURY, CALLED AND SWORN TO
20 TESTIFY

21 VIDEOGRAPHER:

22 Thank you. Mr. Bailey,
23 sound check, please?

24 ATTORNEY BAILEY:

25 Yes. My name is Don

1 Bailey, I'm an attorney. I
2 represent Darrell G. Ober,
3 who's the Plaintiff in this
4 matter. Barb, could you
5 identify yourself and put an
6 address on there?

7 ATTORNEY CHRISTIE:

8 Sure. Barbara
9 Christie, Chief Counsel,
10 Pennsylvania State Police.
11 Office address is 1800
12 Elmerton Avenue, Harrisburg,
13 PA 17110. Phone is 717-783-
14 5568.

15 ATTORNEY BAILEY:

16 I'm in error. I should
17 be putting my address and
18 phone number in there, too.
19 4311 North 6th Street,
20 Harrisburg, PA. This is Don
21 Bailey speaking, of course,
22 717-221-9500.

23 EXAMINATION

24 BY ATTORNEY BAILEY:

25 Q. Colonel Coury, you had an

1 opportunity to hear the introduction
2 earlier. Do you have any need for me
3 to repeat that?

4 A. No, sir, I don't.

5 Q. Okay. In the interest of
6 time, I'm going to move forward then.
7 Let the record note or let the record
8 show that it's about 3:20. I'm going
9 to have to break at about a quarter
10 'til 5:00 or ten 'til 5:00. I have
11 to pick up an expert witness for a
12 trial down in Lebanon tomorrow out at
13 the airport and he's coming in at
14 5:40. So I'm going to try to get as
15 much of this done, Colonel, as
16 possible. With that in mind, you
17 have permission to stop me if you
18 think I'm going on about something,
19 okay?

20 A. Yes, sir.

21 Q. We know all the ground rules.
22 Let's just try to begin with this.
23 How are you employed, sir?

24 A. I'm currently the Vice
25 President of Parsons (phonetic)

1 Corporation, Pasadena, California.

2 Q. And at the times complained of
3 in the complaint, how were you
4 employed?

5 A. I was the Deputy Commissioner
6 of Administration from 1995 ---
7 February of 1995 to July of 2000 and
8 Deputy Commissioner of Operations
9 from July of 2000 until January of
10 2002.

11 Q. And the position that we're
12 talking about is with the
13 Pennsylvania State Police and your
14 rank was Lieutenant Colonel; is that
15 correct?

16 A. Yes, sir, it was.

17 Q. And needless to say, you've
18 retired from that position or retired
19 from the Pennsylvania State Police;
20 right?

21 A. Yes, sir.

22 Q. Now, are you at least
23 generally familiar with the complaint
24 in this case?

25 A. The Complainant, did you say,

1 sir, or the complaint?

2 Q. I'm sorry, sir. The complaint
3 itself, have you had a chance to
4 review it and read it?

5 A. Yes, sir.

6 Q. Okay. Now, there are a number
7 of allegations and complaints in the
8 complaint about you and in order to
9 try to truncate this deposition, I've
10 provided you with a copy of a June
11 16th, 1999 memo that you prepared.
12 Are you familiar with that?

13 A. Yes, sir.

14 Q. I'm going to be asking you
15 some questions about that and I've
16 also provided you with a copy of a
17 statement that you gave on or about
18 June 28th, 1999 to a Major Tom
19 Williams and a Major Robert Werts;
20 are you aware of that?

21 A. Yes, sir.

22 Q. And you have a copy of that
23 statement in front of you; right?

24 A. Yes, sir.

25 Q. What was that investigation

1 about, to the best of your knowledge,
2 Colonel?

3 A. It was about the circumstances
4 surrounding an issue of political
5 corruption on the part of one of our
6 State Police members.

7 Q. And did Captain Ober play a
8 role in that investigation or
9 whatever it was?

10 A. Yes, sir, he did.

11 Q. What role would he play?

12 A. He was the acting Director of
13 the Bureau of Professional
14 Responsibility at that time.

15 Q. And this memo that you
16 composed on June 16th, 1999, why did
17 you write that memo up?

18 A. The Commissioner had directed
19 me to write it up.

20 Q. And does the subject of that
21 memo indicate meeting between the
22 Commissioner and Lieutenant Colonel
23 Robert Hickes?

24 A. Yes, sir.

25 Q. And does it say to put in

1 written form your recollection of the
2 events of Wednesday afternoon May
3 12th, 1999, where you had a sit-down
4 meeting with Colonel Evanko?

5 A. Yes, sir.

6 Q. Can you be more specific as to
7 why Colonel Evanko wanted you to
8 prepare this document?

9 A. Well, I'm sure it's because
10 that the information the Colonel
11 received on that afternoon is the
12 first time he had heard any of that
13 information and it was brand new to
14 him. Secondly, it involved me, to
15 some extent, and I think that that
16 was, and this is just, you know, my
17 own thought process on this, but this
18 was probably one of his first
19 attempts to memorialize gathering all
20 the facts surrounding that
21 investigation.

22 Q. And what investigation do you
23 mean?

24 A. I mean the one into the
25 trooper, Trooper Stanton and all the

1 facts surrounding that investigation.

2 Q. And that was an investigation
3 conducted by the FBI?

4 A. Yes.

5 Q. I mean, the State Police
6 didn't do an investigation, did they?

7 A. I believe that subsequently,
8 the State Police did an
9 investigation.

10 Q. Agreed, but up until May 12th,
11 1999, the State Police had done no
12 investigation?

13 A. It's my --- I would
14 characterize that as the FBI being
15 the lead investigator in the case.

16 Q. Well, what role did the
17 Pennsylvania State Police play in
18 that?

19 A. I believe they provided the
20 FBI with information.

21 Q. Did they investigate? Aside
22 from being a source of information,
23 and I'll ask you about that in a
24 second, what did they investigate?

25 A. What did who investigate, sir?

1 Q. I don't know, that's why I'm
2 asking you.

3 A. Well, you know, my thought
4 would be that providing information
5 is playing a role in the
6 investigation.

7 Q. Is that investigating,
8 providing information? I mean, you
9 come to me, you're a state policeman
10 ---.

11 A. Yeah, I think that's part of
12 the investigation when you're another
13 law enforcement agency. I do.

14 Q. Why?

15 A. Well, because you're both
16 criminal justice agencies. You're
17 both law enforcement agencies.
18 You're sharing information back and
19 forth.

20 Q. Well, this is an issue about
21 role. What was the Pennsylvania
22 State Police investigating?

23 A. They were investigating, along
24 with the FBI, the conduct of the
25 trooper, although the FBI was the

1 lead investigative agency.

2 Q. All right. Well, let's not
3 mince words.

4 A. Okay.

5 Q. Now, how did the FBI come to
6 do this investigation?

7 A. From what I learned on June
8 the 16th, from information they had
9 from a confidential informant.

10 Q. And what information did they
11 have?

12 A. The information they have, and
13 again I'm only recounting this
14 because of what I heard Lieutenant
15 Colonel Hickes say that day in the
16 meeting, was that their informant
17 said that they had a trooper, the
18 confidential informant had a trooper
19 by the name of Kip Stanton who
20 claimed that he could have cadet
21 applicants moved from Band B, which
22 is the lower Band, to Band A and also
23 help to get them through the
24 polygraph and the background process,
25 and ultimately help them get into the

1 Academy.

2 Q. Did he indicate he had any
3 help? Did this investigation that
4 the FBI did ever indicate that this
5 Stanton had any help doing this? Not
6 that it was accurate, but did it ever
7 indicate that?

8 A. Not that I was aware of in
9 this June 16th meeting, but later
10 during the State Police's role of the
11 investigation into Stanton, I
12 understand that a state legislature's
13 name from Western Pennsylvania was
14 also brought up.

15 Q. Do you know who that was?

16 A. No, I don't.

17 Q. Do you know if it was Joe
18 Preston?

19 A. I don't know, sir. I've heard
20 the name. I don't recall it, no.

21 Q. Do you know if Leonard
22 Bodack's name came up?

23 A. I don't recall, sir.

24 Q. Do you remember if there was
25 any indication that higher-ups in the

1 Pennsylvania State Police might be
2 involved?

3 A. I heard that on June the 16th.
4 Yes, sir.

5 Q. So you didn't hear that on May
6 the 12th from Mr. Hickes?

7 A. On June the 16th --- on May
8 the 12th, no, sir, I didn't hear that
9 from him.

10 Q. Did you hear that on May 12th
11 or 13th from Colonel Evanko?

12 A. Let me step back one point,
13 just to be clear of --- did I hear
14 what on those days, sir?

15 Q. Did you hear that there had
16 been some issue that had been raised
17 about higher-ups in the Pennsylvania
18 State Police and the Governor's
19 office possibly be involved in the
20 Stanton ---?

21 A. I heard that on May 12th from
22 Colonel Hickes.

23 Q. Well, you didn't hear it from
24 Colonel Hickes, you heard it from
25 Colonel Evanko, according to what

1 you've told us. Do you want to
2 correct that?

3 A. On May 12th, I believe it was
4 from Colonel Hickes' mouth. Both of
5 them were present in the room on May
6 the 12th. I believe it was Colonel
7 Hickes that said that.

8 Q. Right. In fact, this June
9 16th memo, the Commissioner's asking
10 you to put in writing what you
11 remember about that meeting of May
12 12th; right?

13 A. Yes, sir.

14 Q. And again, you don't
15 specifically know the purpose of why
16 Colonel Evanko was doing that?

17 A. Again, what I had said earlier
18 is I believe it was the impetus at
19 the start of the Colonel gathering
20 facts on --- all the surrounding
21 facts on that incident.

22 Q. Well, Williams questioned Kush
23 on the 25th of May, didn't he?

24 A. I don't know, sir. I've never
25 seen that investigation.

1 Q. You never looked at or saw it?

2 A. No, sir, I never have.

3 Q. Well, you know, what do you
4 think Ober did wrong? What did Ober
5 do wrong, in your eyes? What did he
6 do wrong in your eyes now? I'm not
7 asking in the eyes of the State
8 Police, Colonel Evanko, Rick Brown,
9 Mr. Conley, anybody. I want to know
10 Lieutenant Colonel Tom Coury, years
11 of experience in the State Police,
12 based just on what you know as you
13 sit here today, you tell me, please,
14 in your eyes, what Mr. Ober did
15 wrong.

16 A. When the FBI came to Captain
17 Ober, I expect or should say that I
18 would've expected that Captain Ober
19 do some background information first.
20 In other words, say to the FBI, and I
21 don't know that he didn't, but I have
22 no information to say that he did.
23 When did this occur, who was the
24 Deputy Commissioners at that time,
25 how good is your informant, have you

1 talked to anybody else about this
2 previously, why did you come to me,
3 did you come to be because I'm the
4 Director of IAD, am I just the fellow
5 that answered the phone, is it
6 because I'm the acting Direct, why
7 did you come to Darrell Ober? How
8 confidential is this, you said that
9 there's higher-ups, give me the
10 names, who are you targeting
11 specifically.

12 And last of all I would've
13 said to the FBI, please give me
14 something in writing for my file to
15 back me up on this thing. And not
16 having done any of that, and again,
17 there's no indication to me that
18 Captain Ober's ever done any of that.

19 Q. So he should've questioned the
20 FBI?

21 A. Yes, sir.

22 Q. Have you ever been questioned
23 by the FBI?

24 A. Sure.

25 Q. Been investigated by them?

1 A. No, I don't think so.

2 Q. You've never been investigated
3 by them, have you?

4 A. No, sir.

5 Q. Have you ever sat in on an FBI
6 custodial investigation?

7 A. No.

8 Q. Have you ever done any
9 custodial investigation on behalf of
10 the Pennsylvania State Police?

11 A. Yes.

12 Q. Okay. Have you gone out and
13 cooperated with the local police on
14 investigations?

15 A. Yes.

16 Q. Tell me how you're going to
17 respond to a local policeman or to
18 some lawyer, like a Don Bailey let's
19 say, when you're doing a custodial
20 investigation, and I start
21 questioning you about what you're
22 doing in your investigation, who
23 you're talking about, what
24 information you have? Are you
25 telling me the FBI's going to sit

1 there and tell you and answer your
2 questions if you start interrogating
3 them?

4 A. I wasn't under the impression
5 that Captain Ober was a subject of an
6 interrogation from the FBI.

7 Q. Who was?

8 A. I don't know who was.

9 Q. And that, perhaps, might be
10 the point.

11 A. But I think when two law
12 enforcement agencies are working
13 together, that that's not too much to
14 ask.

15 Q. Okay. So if you had been in
16 Captain Ober's shoes, you would've
17 done it differently?

18 A. Yes, sir.

19 Q. And what if the FBI didn't
20 answer your questions, sir, and they
21 said, well, that's what we know at
22 this point, that's it?

23 A. Then they don't know a whole
24 lot and I would've informed my
25 superiors.

1 Q. Would you?

2 A. Yeah.

3 Q. And if they told you that they
4 thought that your superiors might be
5 involved in this, you would've told
6 them anyway?

7 A. Everybody over a trooper is a
8 superior.

9 Q. Oh, really?

10 A. Yeah. If you're a trooper,
11 everybody from the rank of corporal
12 and up is a superior.

13 Q. Okay. But he's a captain?

14 A. Right.

15 Q. He's head of IAD?

16 A. They didn't mention a rank.
17 They didn't say his superior. They
18 said in the administration of the
19 State Police.

20 Q. Well, the point is you
21 would've gone and told Colonel
22 Evanko; right?

23 A. If I were Captain Ober, no. I
24 would've told my major.

25 Q. Well, why wouldn't you go and

1 tell Colonel Evanko?

2 A. Because the culture of the
3 State Police is we have a chain of
4 command and we operate through it.

5 Q. Your culture?

6 A. Yes.

7 Q. What's that mean?

8 A. Culture is meaning from the
9 day you enlist in the Pennsylvania
10 State Police at the Academy, you're
11 taught to go through a chain of
12 command. You were in the military,
13 Mr. Bailey, you know that.

14 Q. Yes, I was. Nothing in the
15 military that tells a soldier out
16 there that if in his best judgment,
17 he thinks his Lieutenant isn't doing
18 something right and he can't go to
19 the company commander and tell him.
20 In fact, I was in the 101st Airborne
21 Division and the 82nd Airborne
22 Division, every Company Commander I
23 ever had had days, in fact, when they
24 brought soldiers in and talked to
25 them. And I was a platoon leader and

1 I never questioned my captain and no,
2 I didn't question my soldiers on what
3 they told my captain. I just did my
4 job and I assume that's what you're
5 saying. And the question here might
6 be, and this is what I want to ask
7 you, the Pennsylvania State Police
8 has rules and regulations that govern
9 how you're supposed to conduct
10 yourself as an officer and a trooper;
11 is that correct?

12 A. Yes, sir.

13 Q. What rules did Captain Ober
14 break in your view, if any? I'm not
15 saying he did. Now, I'm just asking
16 you if any.

17 A. As it relates to what I stated
18 about going through the chain of
19 command, none that I'm aware of. I
20 think that there may be some FR
21 violations and again, this is just
22 off the top of my head that may be
23 worth more exploring is the fact that
24 Captain Ober didn't put in much
25 paperwork on his findings. And

1 according to regulations, we are
2 required to file reports, but again,
3 that's ---.

4 Q. I thought a copy of this
5 investigation was delivered to the
6 Pennsylvania State Police, it was
7 picked up and delivered to the
8 Pennsylvania State Police?

9 A. What investigation, sir?

10 Q. Let me lay the foundation this
11 way. I believe that the alleged
12 justification for Lieutenant Colonel
13 Hickes and I believe Captain Ober was
14 with him, I may be wrong on the
15 facts, but why they informed Colonel
16 Evanko of what had happened, that was
17 based upon they were being told by
18 the FBI that the investigation was
19 closed and it was just Trooper
20 Stanton and no one else involved?

21 A. I don't know, sir.

22 Q. Okay. Have you ever read
23 Major Williams' report?

24 A. No, sir.

25 Q. Have you ever read your

1 statement before today?

2 A. Yes, sir.

3 Q. You have reviewed it?

4 A. Not recently, sir, but ---.

5 Q. You have a copy in front of
6 you that I've provided; is that
7 right?

8 A. Yes, sir.

9 Q. There's a real tiny little
10 number, 138, at the top. Do you see
11 that? It looks like --- well 130 ---
12 I don't know what that number is.

13 There's a number in the top right-
14 hand corner. Looks to me like ---.

15 A. I see numbers. They are kind
16 of hard for me to read, sir.

17 Q. They are for me, too. Anyway,
18 the beginning page starts off with
19 all right, do you see that?

20 A. Yes, sir.

21 Q. Now, were you read your rights
22 in this investigation?

23 A. Not that I recall.

24 Q. And is it fair to say that you
25 can't think of any reason why you

1 should've been?

2 A. I wouldn't have been surprised
3 either way.

4 Q. All right. Now, have you
5 learned at some point, I know you
6 have today from my earlier
7 questioning, that this investigation
8 actually had roots with the FBI going
9 back as early as 1996, I think it
10 was?

11 A. Yes.

12 Q. When did you first learn that?

13 A. When Captain Monaco called me
14 at some point saying that, you know
15 --- he said, I heard there's some
16 questioning going on about this
17 Trooper Kip Stanton and an FBI
18 investigation. He said, I just want
19 you to know that he, meaning Captain
20 Monaco, and maybe now retired Captain
21 Klaus Barrens knew something about
22 that long before that. And I said
23 that I would pass that information on
24 to Major Werts and Williams and that
25 was the sum and substance of it.

1 Q. So Captain Monaco called you
2 during the Williams/Werts
3 investigation?

4 A. No, I didn't say during the
5 Williams/Werts investigation. I
6 don't know what point he called me,
7 but at some point he learned that
8 there was something going on, as it
9 relates to Stanton, and he called me.

10 Q. Well, you need, if you can
11 please, to look back for me in your
12 mind's eye and tell me when that
13 conversation may have taken place,
14 vis-à-vis the fall of 1998. What I'm
15 looking for is your earliest
16 knowledge that there might have been
17 some problem with Mr. Stanton.
18 That's all I'm looking for.

19 A. I honest to God can't remember
20 when that might have been, Mr.
21 Bailey, but I know that when Monaco
22 called is the first time that I
23 believe I knew there was something
24 going on with Stanton that the
25 Department was aware of before this.

1 Q. Okay. That's what I'm looking
2 for. The Department was aware of it.
3 Now, do you know if that was before
4 the fall of '98, before the FBI comes
5 to Mr. Ober or after?

6 A. Before I knew it or before the
7 FBI talked to Monaco, what ---?

8 Q. No, we know if Mr. Kush is
9 telling the truth that the FBI talked
10 to Mr. Barrens back around '96. What
11 I'm looking for, obviously, is when
12 that was communicated up or when
13 there was a record made with the
14 Pennsylvania State Police?

15 A. I don't know, sir.

16 Q. And you don't know when you
17 first learned about it, whether it
18 was before the fall of '98 or after?

19 A. I really don't. I really
20 don't.

21 Q. Well, do you know of any
22 records that exist about that prior
23 contact that the FBI had with Mr.
24 Barrens?

25 A. No, I don't.

1 Q. Do you ever talk with Mr.
2 Barrens about it?

3 A. No. I think --- he was
4 retired by then, I'm sure of that.

5 Q. Well, but Captain Monaco knew
6 something about it; right?

7 A. Right.

8 Q. How did he learn about it? He
9 learned about it, you told me, that
10 he had learned about it from Mr.
11 Barrens or some kind of discussion
12 with Mr. Barrens; is that correct?

13 A. No, no. I said that he heard
14 that there was something going with
15 the Stanton case and he related to me
16 that the FBI had spoken to him or him
17 and Barrens at some point.

18 Q. But that's my point. When did
19 Mr. Barrens retire?

20 A. I don't know, sir.

21 Q. Well, if I told you that I
22 believe that Mr. Barrens had been
23 contacted prior to when Mr. Ober was
24 contacted by the FBI, that would be
25 consistent with what Mr. Kush said,

1 wouldn't it?

2 A. It could be. Yeah, you'd have
3 to look at the dates and compare it
4 all, but it could be.

5 Q. Well, I can tell you the dates
6 are pretty plain. They're pretty
7 clear in the statements. I mean, I
8 don't know either, I wasn't there.
9 But, you know, what I'm trying to get
10 at, what I'm trying to figure out is
11 whether or not Captain Monaco was
12 investigated or the facts surrounding
13 that situation, whether or not Mr.
14 Barrens was investigated and the fact
15 surrounding that situation because
16 all the excitement I'm seeing here
17 seems to be Colonel Hickes, not about
18 Captain Ober. And I can't figure it
19 out. I don't understand why. So
20 what I'm trying to learn, what I'm
21 trying to get at is, you know, if you
22 learned anything from Mr. Barrens,
23 whether he communicated anything,
24 whether Captain Monaco communicated
25 anything when he learned about it. I

1 want to know what investigation Werts
2 and Williams did into the Barrens and
3 being told about this. Was there any
4 investigation into that?

5 A. I don't know, sir.

6 Q. Well, didn't you participate
7 in the investigation into Captain
8 Ober?

9 A. No, sir.

10 Q. Well, the Colonel calls you
11 into the office there in, what is it,
12 May 12th?

13 A. Yes.

14 Q. What's he call you in for, to
15 witness a conversation?

16 A. Yes. Well, not to witness a
17 conversation. He had already had a
18 conversation with Captain Ober and
19 Colonel Hickes that was a witness.
20 He called me in to tell me about the
21 conversation he had with them as it
22 related to me.

23 Q. Well, was Colonel Hickes
24 there?

25 A. Yes.

1 Q. Okay. So he had a discussion
2 with Colonel Hickes and you and
3 Colonel Evanko were there?

4 A. Yes.

5 Q. I mean ---.

6 A. You asked me --- the question
7 was had I participated in the
8 investigation on Captain Ober.

9 Q. Well, you have a statement.
10 According to your definition of
11 participating in an investigation,
12 you're a participant in the
13 investigation.

14 A. If you look at it in that
15 light.

16 Q. Well, that's the way you put
17 it. Can we break for a second?

18 A. Sure.

19 Q. Thank you.

20 OFF VIDEOTAPE

21 BRIEF RECESS TAKEN

22 ON VIDEOTAPE

23 ATTORNEY BAILEY:

24 Back on the record.

25 VIDEOGRAPHER:

1 3:42 p.m. We're back
2 on the video, audio and
3 record.

4 BY ATTORNEY BAILEY:

5 Q. Okay. Colonel, did Mr.
6 Williams ask you --- it's page five
7 of the interview. He says, Colonel,
8 would you consider this a major
9 incident, and you said, absolutely, I
10 consider it a major incident for a
11 number of reasons. First, the
12 allegations pointed at the
13 Commissioner and the Commissioner's
14 cabinet official. You know, all
15 three of us guys in this room know
16 that the FBI is noted for their
17 tight-lips, so to speak, and I think
18 that there would be a great potential
19 for this kind of information to leak
20 out and I think that that would've
21 been damaging to possibly damaging to
22 the Commissioner.

23 Were you worried about the
24 Commissioner being embarrassed if
25 somebody popped up and said,

1 Commissioner, I heard this, are you
2 worried about public image?

3 A. I was worried about the
4 Commissioner being embarrassed by
5 saying, I don't know anything about
6 this, I have no idea what you're
7 talking about.

8 Q. Well, this seems to indicate a
9 distrust to the FBI.

10 A. No, it's not a distrust. It's
11 just that, you know --- in my
12 experience with the FBI, I have not
13 known them to be extremely tight-
14 lipped and it would not have
15 surprised me if the word got out.
16 And my concern was that somebody
17 would be asking the Commissioner
18 about it and him having to say, I
19 don't know what you're talking about.

20 Q. So Ober put the Commissioner
21 potentially in a position by not
22 telling him, where the Commissioner
23 could be embarrassed if somebody
24 asked him?

25 A. I would not say Captain Ober

1 did that exclusively. I think it's
2 Captain Ober and Colonel Hickes.

3 Q. Okay. Well, they both did
4 that?

5 A. Yes, sir.

6 Q. They didn't go and tell their
7 commanding officer about an
8 investigation by the FBI and the
9 matters pertaining to the
10 Pennsylvania State Police?

11 A. Yes, sir.

12 Q. And the fact that those
13 matters might involve the
14 Commissioner himself, not that
15 anybody would believe that, but an
16 investigation is an investigation,
17 that doesn't concern you? You don't
18 think that Colonel Hickes and Colonel
19 Ober did the right thing in that
20 circumstance?

21 A. I'm relying on what I heard
22 Colonel Hickes say on May the 12th.
23 He never mentioned anything other
24 than the administration of the
25 Pennsylvania State Police and the

1 Governor's office. That is a very,
2 very broad range. He never mentioned
3 anything that either one of them did
4 to narrow or verify any of that
5 information and he never mentioned
6 that the FBI said, keep this
7 confidential, don't tell anybody,
8 keep it quiet. None of that was ever
9 mentioned. So I based this statement
10 on what I heard in that room on May
11 the 12th.

12 Q. Well, you know, let's say that
13 nothing was ever said by the FBI
14 about confidentiality or even
15 indicated, you know, even remotely
16 suggested by them. If Captain Ober
17 believes that the FBI or maybe some
18 Grand Jury investigation, for all
19 anybody knows, is going on that might
20 involve the Commissioner in
21 wrongdoing, front office, upper
22 echelon. I mean, the Pennsylvania
23 State Police upper echelon, you would
24 agree, is not a very large group; is
25 that fair to say?

1 A. Yeah, the term upper echelon
2 was never used, but the upper echelon
3 is not very large.

4 Q. Higher-ups, what does that
5 mean?

6 A. Seems to me the terminology
7 you use was in administration.

8 Q. Now, if the FBI had mentioned
9 a particular position, let's say your
10 name had been mentioned, would you
11 expect Captain Ober to come and tell
12 you?

13 A. No, sir.

14 Q. Would you expect him to go and
15 tell Colonel Evanko?

16 A. Yes, sir.

17 Q. Okay. But your name wasn't
18 used, was it?

19 A. Nor my position.

20 Q. Well, I thought somewhere one
21 of the FBI agents said that the term
22 Lieutenant Colonel was used?

23 A. Never came up on May 12th,
24 that I heard.

25 Q. Should it have?

1 A. I think that would have been
2 something I would've been out there
3 saying right away to the
4 Commissioner. Your position --- I'd
5 be using --- if I had that
6 information I'd be saying, I didn't
7 come to you boss because they said
8 the Deputy Commissioner, they said
9 the Commissioner or the FBI told me
10 not to, seems to me I would've been
11 advocating that to the Commissioner
12 to make a real strong point.

13 Q. Why? Are you afraid the
14 Commissioner can't stand the scrutiny
15 of some spurious and frivolous
16 accusation out there?

17 A. No, because ---.

18 Q. What would you be afraid of?
19 What do you have to be afraid of?

20 A. Nothing to be afraid of, it's
21 just that knowing the Commissioner
22 and knowing how I am and knowing how
23 the Governor's office is. They don't
24 like to be surprised. They don't
25 like to have to say I don't know,

1 especially on frivolous matters that
2 have no merit. But it just seems to
3 me that when the Commissioner asked
4 Colonel Hickes three times, why
5 didn't you tell me, that if it's
6 because the FBI told him not to or
7 because the Commissioner's position
8 was mentioned or my position was
9 mentioned, that would be a very, very
10 logical appropriate, clear answer.

11 Q. And he didn't say that?

12 A. No, sir.

13 Q. Are you suggesting he lied?

14 A. No, sir.

15 Q. No. You're not suggesting he
16 lied because you know that those
17 things were mentioned in wiretaps,
18 weren't they?

19 A. I don't know that, sir.

20 Q. You don't?

21 A. No, sir.

22 Q. What if I told you they were,
23 what would you say?

24 A. I don't know what I would say,
25 sir. I mean ---.

1 Q. Well, wouldn't that make
2 Captain Ober an extremely lucky
3 prophet that if it's not mentioned by
4 the FBI to him, how would he be ---
5 unless he's involved with these CIs
6 and all this stuff, how's he going to
7 know they're going to mention the
8 Governor's office or higher-ups in
9 the State Police? How would he know
10 that?

11 A. He wouldn't.

12 Q. No, he wouldn't. So you don't
13 have any real reason to doubt that
14 Colonel Hickes and Captain Ober were,
15 in fact, told by the FBI that higher-
16 ups, I don't know exactly what the
17 term would be, higher-ups, upper
18 echelon, I don't think that was used
19 either. I agree with you. That was
20 my term. But higher-up, I believe,
21 was a term that may have been used,
22 higher-ups, Governor's office, you
23 know ---. Captain Ober was told
24 about an investigation and he made a
25 decision on how he should inform

1 people on that investigation; right?

2 A. Yes, sir.

3 Q. I mean, rightfully or
4 wrongfully, that's what he did?

5 A. Yes, sir.

6 Q. And in your view, he was
7 wrong; is that correct?

8 A. It was an incorrect decision.
9 Yes, sir.

10 Q. It was an error in judgment;
11 am I correct?

12 A. Yes, sir.

13 Q. But it was not one which
14 violated the rules of the
15 Pennsylvania State Police; am I
16 correct?

17 A. At the time that I heard that
18 on May 12th, there was nothing to
19 indicate that Captain Ober had
20 violated any field regulation or
21 regulation of the agency. That's
22 correct.

23 Q. So what he had done wrong was
24 violate a way of doing things?

25 A. A principle of culture.

1 Q. Okay. All right. Now, let's
2 take it from there. Should he have
3 been punished for that? I'm not
4 saying he was. I'm just asking,
5 should he have been punished for
6 violating that principle of culture?

7 A. There is no way to punish or
8 DAR a member unless he violates a
9 regulation of the agency. So the
10 answer is you would not punish him
11 for that, sir.

12 Q. Was the transfer to Washington
13 --- strike that.

14 Was the attempt to transfer
15 Mr. Ober to Washington, your Counsel
16 describes it as something that was
17 later rescinded. I'm talking about
18 the initial attempt to transfer him,
19 rescinded or not. Was the attempt to
20 transfer him to Washington, was that
21 punitive in nature?

22 A. No, sir.

23 Q. Why not?

24 A. Well, I think first of all,
25 the Commissioner holds the answer for

1 you, but based on my knowledge, that
2 position at that time did not come
3 under me. I was a Deputy
4 Commissioner of Administration. The
5 lion shared --- the decision making
6 there was between the Commissioner
7 and Lieutenant Colonel Joseph
8 Westcott. I can only tell you what I
9 saw from the sidelines and share with
10 you what I heard on some of the
11 sidebars, is that just as the
12 Commissioner had assigned someone to
13 work with Major Werts for the
14 Republican National Convention and
15 found it to be going extremely well,
16 that he thought that he should also
17 assign someone to work with Major
18 Szupinka for the National Governor's
19 Association's Conference. What he
20 was looking for was someone who was a
21 darn fine administrator, a good
22 project manager and had those skills
23 and he thought Captain Ober had those
24 skills.

25 Q. He had thought very, very

1 highly of Captain Ober?

2 A. Administrative skills and
3 project management, yes.

4 Q. And personally thought very,
5 very highly of Captain Ober? I mean,
6 I'm not going to take a Captain and
7 put him out there with a potential
8 President of the United States,
9 someone who's very erudite as
10 President Bush, give or take a few
11 friends on the Supreme Court. But
12 the point is, if you have a guy out
13 there in Pittsburgh who's going to be
14 representing you with the National
15 Governor's Conference, you want
16 somebody you really --- is wearing
17 your face and you want you be proud
18 of them; right?

19 A. He would not send somebody out
20 there to fail nor make the Department
21 look bad.

22 Q. Well, I'm sure you could count
23 on Captain Ober, regardless of
24 circumstances, never to do that. And
25 I'm sure Colonel Evanko knew that.

1 But you talked to Colonel Evanko, did
2 you, and did he indicate that the
3 reason he wanted Captain Ober to go
4 out there is because Captain Ober was
5 such an exceptional officer?

6 A. I wouldn't say he said he was
7 such an exceptional officer. I would
8 say that in the conversations I
9 overheard, it was because Darrell, A,
10 could do the job, the job needed done
11 and Darrell was a good project
12 manager and an administrative officer
13 that could get it done.

14 Q. So you never had any
15 discussions with --- I'm sorry, were
16 you finished? I interrupted you.

17 A. I'm finished.

18 Q. Okay. So you never had any
19 discussions with Colonel Evanko where
20 Captain Ober was cussed out,
21 criticized --- not that he would
22 cuss, I don't mean that literally.
23 In other words, I don't mean swear
24 words he used. I mean, you know,
25 where he was criticized very strongly

1 or on very strong terms for what he
2 did and not divulging the FBI thing.
3 Colonel Evanko never indicated any
4 sentiments like that?

5 A. He never did that in my
6 presence, sir.

7 Q. Okay. Well, there's an
8 allegation in the complaint that he
9 became very, very angry when he was
10 informed by Captain Ober and Colonel
11 Hickes of the FBI probe and that he
12 went into a rage. Was that true?

13 A. Was it true that he did that?

14 Q. Yes.

15 A. I wasn't there, sir.

16 Q. So you simply don't know?

17 A. I do not know, sir.

18 Q. Well, but he did launch, this
19 was Colonel Evanko, was the person
20 who launched this investigation into
21 the facts and circumstances, to
22 borrow your terminology, about what
23 occurred in the fall of '98 with the
24 FBI probe or investigation, whatever
25 you call it?

1 A. You term it an investigation,
2 semantics, I term it an inquiry.
3 It's an administrative inquiry.

4 Q. So the FBI was doing an
5 administrative inquiry, do you mean
6 ---?

7 A. Oh, no. The FBI was doing a
8 criminal investigation, yes. Colonel
9 Evanko launched an administrative
10 inquiry.

11 Q. Right. What you're describing
12 what Colonel Evanko did was an
13 administrative inquiry?

14 A. That's the way I would phrase
15 it, sir.

16 Q. It wasn't a full
17 investigation, it was an
18 administrative inquiry.

19 A. Yes, sir.

20 Q. Was it into Captain Ober?

21 A. No, sir.

22 Q. Well, was it into Colonel
23 Hickes?

24 A. No, sir.

25 Q. Was Colonel Hickes --- do you

1 know whether he was ever read his
2 rights during the investigation?

3 A. I don't know, sir.

4 Q. Well, why was Captain Ober
5 read his rights?

6 A. I don't know, sir.

7 Q. You didn't make that
8 decision ---

9 A. No, sir.

10 Q. --- so you don't know?

11 A. I don't know, sir. I was not
12 part of that inquiry process.

13 Q. Was there ever a meeting where
14 --- before --- strike that.

15 It is my understanding that at
16 some point, Colonel Evanko launches
17 what you have referred to as an
18 administrative inquiry into the
19 events of '98. Let's just call it
20 the events of '98, sir.

21 A. Okay.

22 Q. So we don't have to waste all
23 our time repeating that verbiage.

24 All right. Now, was there some kind
25 of a meeting where you were present

1 and Colonel Evanko was present, Mr.
2 Brown was present or others were
3 present where launching this
4 administrative inquiry was discussed?

5 A. I can recall that I was in the
6 Commissioner's office sometime after
7 May the 12th and I would have to
8 guess within a couple days after May
9 the 12th. There were other people in
10 the office, I don't recall who they
11 were. I'm 99.9 percent sure it
12 wasn't Captain Brown. Where the
13 Commissioner was determining how to
14 go about gathering the facts, in
15 other words, what is the proper
16 instrument, what is the proper tool
17 to use, to go about that. And more
18 or less, saying what all he wanted to
19 know. So to that extent, yes, I was
20 present for a conversation.

21 Q. Well, did anyone at all during
22 that meeting say to Colonel Evanko,
23 you can't do that or you shouldn't do
24 this or that?

25 A. I gave the Commissioner ---

1 since I was Deputy Commissioner of
2 Administration and BPR fell under me
3 and I had albeit five to eight years
4 before that being the Director of
5 BPR, I did give him my opinion on how
6 I thought that should go.

7 Q. What did you tell him?

8 A. I told him that from what I
9 could see, that there was no
10 violations of field regulations on
11 the part of any member. So,
12 therefore, it shouldn't be a BPR
13 personnel-type complaint
14 investigation. That if what he
15 wanted was the facts on what's going
16 on, as it relates to Stanton, is that
17 system foolproof, is there any way
18 anybody could get in and tamper with
19 the cadet processing, as it relates
20 to Captain Ober and the chain of
21 command and the information back and
22 forth from the FBI and the
23 information passed from Captain Ober
24 to Colonel Hickes. That inasmuch as
25 there was no indication that any

1 member had violated Department rules
2 or regulations, but I thought it
3 should be an administrative inquiry.

4 Q. Well, did anybody discuss
5 those feelings of yours with Mark
6 Campbell?

7 A. I don't know, sir. I didn't
8 have any discussion with Mark
9 Campbell.

10 Q. Do you know whether the good
11 Colonel Evanko had any discussions
12 with Mark Campbell?

13 A. I know the Commissioner said
14 to me, and I believe it was on that
15 same day, that on that same day he
16 would be discussing the issue with
17 Mark Campbell.

18 Q. Do you know whether he, in
19 fact, did discuss it with Mark
20 Campbell?

21 A. Factually, I don't know that.

22 Q. I may be mistaken, but I think
23 Mr. Campbell does indicate there may
24 have been some kind of discussion
25 early on about that, that the Colonel

1 had called him. Now, let's set the
2 month of May aside. Do you know
3 whether there was any further
4 discussions with Mark Campbell about
5 Mr. Ober?

6 A. None with me, sir.

7 Q. No. But my question is do you
8 know whether Colonel Evanko, not
9 Colonel Coury, do you know whether
10 Colonel Evanko talked with Mr.
11 Campbell after the month of May 1999?

12 A. No, sir. I do not know.

13 Q. Do you know whether Colonel
14 Evanko ever discussed the transfer of
15 Captain Ober to Washington?

16 A. With Mark Campbell?

17 Q. Yes.

18 A. No, sir. I don't know.

19 Q. Would you be surprised if he
20 did?

21 A. Would I be surprised if he
22 did?

23 Q. Yes.

24 A. No. I would not be surprised.

25 Q. Why?

1 A. Well, because as the
2 Governor's Deputy Chief of Staff at
3 that time, the Commissioner routinely
4 conveyed administrative-type
5 information, personnel-type
6 information and anything of
7 significance that was going on in the
8 Department to Campbell.

9 Q. Well, did Mr. Campbell express
10 an interest and a desire to have Mr.
11 Ober work on this project out there
12 in Washington?

13 A. I don't think that if the
14 Commissioner relayed that information
15 to Mark Campbell, it was so much that
16 he's sending Captain Darrell Ober out
17 there. It's more that he's sending a
18 Captain out there to handle, to help
19 with the NGA and, oh, by the way,
20 it's Captain Ober. So the point was
21 telling Mark Campbell that the issue
22 was relating to the NGA, not to
23 Captain Darrell Ober.

24 Q. Sure. And does Mr. Campbell
25 know Mr. Ober, do you know?

1 Q. Well, you know, I could be
2 wrong, but I don't think that Mr.
3 Szupinka ever requested anybody to
4 help him.

5 A. No. And knowing him, he
6 wouldn't nor would any major.

7 Q. Okay. But who would evaluate
8 that situation, ascertain it and
9 decide that we need a really --- I
10 mean, there must be a problem there
11 because you need a real good
12 organization man out there and Ober's
13 the guy. Who would've decided that
14 we need him out there to do that?

15 A. It would be the Deputy
16 Commissioner of Operations.

17 Q. Who was?

18 A. Colonel Joe Westcott.

19 Q. And here's Colonel Evanko
20 talking to Mr. Campbell about Mr.
21 Ober and Colonel Evanko gets
22 personally involved, as the record
23 indicates, in the transfer of Mr.
24 Ober to Washington?

25 A. Right. Only the Commissioner

1 can affect the transfer.

2 Q. Well, did you get involved in
3 that decision or evaluation ---?

4 A. Only as it relates to maybe
5 cutting the paperwork, since
6 personnel came under me and to say
7 that Captain Ober, who was a part of
8 my command, was going to be
9 transferred and did I have confidence
10 he could do the job.

11 Q. Well, did you?

12 A. Yes.

13 Q. Now, you talked to Mr. Conley
14 about him?

15 A. About?

16 Q. Mr. Ober. Mr. Conley's
17 already testified to that. Didn't
18 you talk to Mr. Conley about Mr.
19 Ober?

20 A. Sure. I don't know if it's in
21 relationship to your previous
22 question.

23 Q. Okay. But what would you talk
24 with Mr. Conley about Mr. Ober ---
25 what ---?

1 A. Well, Captain Ober was a
2 captain under Major Conley. I talk
3 to all my majors about their
4 captains. Are they doing the job,
5 how are things going, A, B, C, D, E.
6 So that's not uncommon.

7 Q. Well, one thing I noticed
8 about Colonel Conley's deposition, he
9 really is a stickler for sticking to
10 that chain of command; isn't he? I
11 mean, he seemed to be in what he
12 indicated to me.

13 A. Yes.

14 Q. He barely had any discussions
15 with Colonel Evanko about Captain
16 Ober.

17 A. Right.

18 Q. But he talked with you a lot
19 about that.

20 A. He talked with me about that.
21 I would not say a lot. If he had
22 something to say about Captain Ober,
23 he came to me with it.

24 Q. Well, what did he have to say
25 about Captain Ober that he came to

1 you about?

2 A. That he had talked to the
3 Captain about a couple investigations
4 that were dragging on that he thought
5 should've been concluded. He had no
6 confidence in the Captain after the
7 Captain didn't inform him of this
8 Stanton investigation, issues such as
9 that.

10 Q. And did you say, Major Conley,
11 you're wrong about Captain Ober, he's
12 a good organization man, he can be
13 trusted, in fact, he is such a superb
14 officer, Colonel Evanko's sending him
15 out to Washington County out there
16 where he can represent the
17 Pennsylvania State Police, it's
18 public face in interacting with the
19 National Governor's Conference or
20 Association or whatever it was? I
21 mean, was there any discussion like
22 that? Did you disagree with Major
23 Conley?

24 A. I can't disagree with
25 somebody's perception. Yes, I'm sure

1 Major Conley and I both agreed to
2 Captain Ober's strength as it relates
3 to administration. I mean, we even
4 had a discussion about switching
5 Captain Ober and Captain Scurkis
6 because the job of Director of
7 Systems and Process Review is more
8 operational than administration. I'm
9 sorry, excuse me, reverse that. It's
10 more administration that it is
11 operation. And I had asked then Major
12 Conley how he would feel about
13 switching and putting Captain Ober
14 back in SPR and he said it was an
15 issue that he just did not believe
16 that they could work together any
17 longer. So it was not an issue of
18 his administrative skills.

19 Q. All right, sir, give me one
20 second.

21 BRIEF INTERRUPTION

22 BY ATTORNEY BAILEY:

23 Q. Well, I understand that there
24 was a great deal of urgency and need
25 to get Captain Ober out there to

1 Washington; right?

2 A. There was a need to get
3 someone out there. The NGA was going
4 to occur in July.

5 Q. So we needed Captain Ober out
6 there and in your eyes or in the eyes
7 of Mr. Westcott, Mr. Szupinka, no.
8 So you gave Captain Ober a call or
9 you had Mr. Conley give Captain Ober
10 a call to discuss going out to
11 Washington with him; right?

12 A. I wouldn't say to discuss it,
13 to tell him.

14 Q. You didn't even ask his
15 opinion about it?

16 A. You know, Mr. Bailey, I've
17 moved a lot of majors, captains and
18 lieutenants, some for good reasons,
19 some for bad reasons. I never
20 engaged to discussing with them why.
21 I engaged with them what I needed to
22 tell them, where I needed them to go
23 and let's get it done. No. And I
24 don't think I told Colonel Conley to
25 discuss it with him either. I mean,

1 that's my methodology, that's my
2 management style. I'm very chain of
3 command, I'm very semi-military.
4 I've probably moved more majors,
5 captains, and lieutenants than my
6 predecessors or the current
7 commissioner or deputies and I just
8 moved them. That was it.

9 Q. Do State Police regulations
10 say anything about either informing
11 people or giving them opportunities
12 or options? Does the contract say
13 anything about it?

14 A. There are some contractual
15 obligations as it relates to the
16 transfers, but generally not for
17 commissioned officers.

18 Q. Okay. So it's your command
19 methodology to just send a directive
20 to somebody --- I hesitate to call it
21 a courtesy, I don't want to do that.
22 I've had the privilege of commanding
23 people and it wasn't my methodology.
24 That doesn't make me right, but I'm
25 just curious. So you would just

1 issue an order and that's ---?

2 A. Well, it wasn't my order, you
3 know ---. It was relayed to me from
4 the Commissioner. It's not up for
5 discussion. It's relayed, you know
6 ---.

7 Q. There, you just answered my
8 question. Not up for discussion.

9 A. Right.

10 Q. The Commissioner says do it,
11 do it. He's the boss; right?

12 A. Yes. And what it boils down
13 to is the best interest of the
14 Department and the citizens of the
15 Commonwealth.

16 Q. Do you know why Captain Ober
17 was transferred --- I don't know if
18 transferred is the right word, to be
19 honest. My understanding is he was
20 on detached leave from the Bureau,
21 BPR, to IIMS at the Commissioner's
22 order. That's my understanding; is
23 that correct?

24 A. Yeah. He wasn't transferred,
25 he was on detached assignment.

1 Q. So he was told ---. In other
2 words, his detached assignment was
3 ended and he was to report back to
4 BPR for a period of four days? I
5 know you've heard testimony here
6 today about that, but do you
7 recollect that?

8 A. What I recollect factually, is
9 that the Commissioner told me that he
10 had assured Captain Ober that he
11 would be returned to BPR after the
12 IIMS project was completed and that
13 he was going to live up to his word
14 to do that.

15 Q. And in order to live up to his
16 word to do that, he was going to
17 transfer Captain Ober for four days
18 to BPR and from there to Washington?

19 A. It was actually for ---
20 initially, it was for 15 days or a
21 two week period and somehow it got
22 whittled down to operationally to be
23 four days.

24 Q. Do you know whether that
25 resulted from the expression of

1 operationally? What's the
2 Pennsylvania State Police definition
3 on the difference between operations
4 and administrations?

5 A. Administration is managing
6 projects, managing staff type work.
7 Operationally means, to me, guiding,
8 directing investigations.

9 Q. Well, who in the name of
10 goodness put him in charge of IAD?

11 A. I did, with the Commissioner's
12 concurrence because everybody needs a
13 chance. You don't know that until
14 you try. And he had been in Bureau
15 Systems and Process Review or
16 Divisions Systems and Process Review
17 and did an outstanding job.

18 Q. You know, not to debate an
19 issue and I'm not so sure how
20 material it is, but from my
21 investigation, until this fall of '98
22 thing, this appeared to me to be an
23 exceptional officer, who Major DeWire
24 describes was on a fast track. I
25 mean, a guy who was really a producer

1 for the Pennsylvania State Police and
2 a real future. Aside from Major
3 Conley's comments and unhappiness
4 with him, he just appears to be an
5 exceptional officer from everything I
6 can see. Given your knowledge, he
7 was in your chain of command, you've
8 already talked about his ability to
9 perform. What about his potential?
10 Until the fall of '98, what was his
11 potential? How good was this man and
12 how did he look?

13 A. Comparatively speaking,
14 administratively, I think he is
15 probably near the top in officers
16 that can handle administrative
17 matters and issues, knowing the
18 rules, the regulations, Department
19 policies, things like that. But as
20 it relates to conducting field
21 operations, things like that, I think
22 he's not near the top of that group,
23 you know. And I think that when
24 you're considering someone,
25 especially for the rank of major,

1 you're comparing him to his peers.
2 So I think administratively compared
3 to his peers, yeah, he is very strong
4 --- excuse me. Operationally, less
5 than the other peers.

6 Q. And you had indicated that was
7 because he didn't have experience?

8 A. That's right.

9 Q. So you're not saying that you
10 don't believe he couldn't do those
11 things. You're saying is, for
12 whatever reason, he lacked experience
13 at those things; right?

14 A. Yes. I mean, in the grand
15 scheme of things, the years that
16 Captain Ober has with the Department
17 and the time in grade, he's
18 relatively a junior officer. I mean,
19 when you take guys like Major
20 Koscelnak, Major Szupinka, Major
21 DeWire, they've all got a lot more
22 time in grade, a lot more time in the
23 job, and hence, a lot more
24 experience.

25 Q. Now, at some point Captain

1 Ober's transferred to LCE?

2 A. Yes, sir.

3 Q. However, Counsel and I may
4 respectively disagree about what
5 happened with this thing in
6 Washington, at some point he's
7 transferred to LCE. Was that after
8 the issue with Washington was
9 resolved?

10 A. Yes.

11 Q. Well, who decided to transfer
12 him to LCE or did he come asking for
13 it?

14 A. I don't know if he asked for
15 it or not. I wasn't part of that
16 process. My involvement is that the
17 Commissioner had agreed not to send
18 Captain Ober to Washington, which my
19 understanding is he could've made him
20 go, you know, he could've sent him.
21 But believe it or not, the
22 Commissioner is a very compassionate
23 individual and cares a lot about
24 people. He elected, for whatever
25 reason, not to send him to

1 Washington. So hence, you still need
2 a place for the Captain to be
3 stationed. You have to have a spot
4 for him.

5 Q. So it's the Commissioner that
6 sent him to LCE?

7 A. The Commissioner has the final
8 say on wherever everybody goes.

9 Q. That's not the question. We
10 know he has the final say. Was it
11 the Commissioner that sent him to LCE
12 or did somebody else make that
13 suggestion, for example?

14 A. I can't answer that. I did
15 not.

16 Q. Okay. Do you know whether he
17 was put into a lieutenant's position
18 at LCE?

19 A. Yes, he was.

20 Q. Why?

21 A. Because Lieutenant Houston
22 Williams was not present. Lieutenant
23 Houston Williams, I believe at that
24 time, he was on suspension without
25 pay. And that Captain L. Campbell,

75

1 who's the captain there, was going to
2 retire and that gave the Department
3 the opportunity to put Captain Ober
4 there, so then even give him some
5 quick time to transition with Captain
6 Campbell to become a full-time
7 position. And I don't know that to
8 be factual. I absolutely don't.
9 That's just what I think, my
10 impression.

11 Q. Okay. Did you have
12 lieutenants available at that time?

13 A. I don't know.

14 Q. Well, did you look?

15 A. I didn't, no.

16 Q. Do you know whether the
17 Colonel looked?

18 A. I do not know.

19 Q. Do you know whether Mr.
20 Westcott looked?

21 A. No, sir. I do not know.

22 Q. Well, how many years have you
23 been on the State Police before you
24 retired?

25 A. Thirty-three (33).

1 A. Because I wanted him to know
2 that regardless of what he heard
3 through the rumor mill of
4 consternation between Captain Ober,
5 Colonel Hickes, Colonel Coury,
6 Colonel Evanko, that we weren't
7 singling him out. We did not want
8 him to be viewed any other way than a
9 Captain in good-standing with the
10 agency.

11 Q. Well, let's follow up on that
12 just a little wee bit. Now, when you
13 gave your statement to Major
14 Williams, did you express a concern
15 about the upcoming election in the
16 fall?

17 A. Uh-huh (yes).

18 Q. Are you involved in Republican
19 politics at all?

20 A. Not really.

21 Q. Well, what was your concern
22 about the election coming up in the
23 fall?

24 A. My concern about the election
25 coming up in the fall was that the

1 Governor's office could get a call
2 some morning from the press saying,
3 listen, we heard the FBI's conducting
4 an investigation into your office
5 being involved in a trooper getting
6 people into the State Police Academy
7 and the Governor's office is going to
8 have to say, we have no idea what
9 you're talking about. And that would
10 be embarrassing.

11 Q. I don't mean the Republican
12 Party and I don't mean the FBI any
13 disrespect. I can't conceive of the
14 FBI in Pennsylvania letting a
15 Republican administration go out on a
16 limb with the press about some
17 pending investigation. I mean, I
18 can't conceive that because I know of
19 their roots and their connections.
20 You're telling me that you actually
21 had a fear, you made this comment in
22 your statement about the FBI not
23 being tight-lipped. And you have
24 this concern about the election,
25 which I think speaks pretty well of

1 you because it doesn't indicate that
2 you think the FBI has any partisan
3 leaning at all and I think that
4 speaks well of you in that regard.
5 Obviously, you don't run into
6 anything like that. But my comments
7 notwithstanding. My question is,
8 were there any facts known to you
9 which would indicate that the FBI was
10 going to reveal this information to
11 the press or anything like that?

12 A. No. And you said a fear, I
13 didn't have a fear, sir. If you want
14 to term it a concern, yeah. I have a
15 loyalty to the Commissioner and the
16 Governor's office to keep them from
17 getting blindsided on issues, if I
18 have the ability to do otherwise.
19 The FBI, I don't know what their
20 political face or allegiance were in.
21 And I wasn't --- there was also the
22 concern that they wouldn't overtly
23 leak this information, it would
24 accidentally get out. Not that the
25 FBI would call a press conference,

1 but that it would leak out.

2 Q. Fair enough. Fair enough.

3 A. I mean, when you're dealing
4 with confidential informants and
5 things like that, word leaks out.

6 Q. Or a Democratic State
7 Representative like Joe Preston and a
8 Democratic State Senator like Lenny
9 Bodack from Allegheny County, you
10 never know.

11 A. I didn't even know their
12 political face and I didn't even know
13 their names until today so --- or
14 that I can recall.

15 Q. Do you know whether the FBI
16 ever investigated them on these
17 allegations?

18 A. I don't know, sir.

19 Q. I wonder if they'll answer
20 questions about whether they
21 investigated them and why not. Do
22 you have any information to indicate
23 that the FBI buried the underlying
24 investigation for any reason?

25 A. Into Trooper Stanton?

1 Q. Yes.

2 A. I thought that that
3 investigation was turned over to the
4 State Police and Stanton was arrested
5 and plead guilty. So I wouldn't see
6 how it could be buried.

7 Q. Okay. Did you ever work with
8 the Grand Jury?

9 A. Not in many years.

10 Q. All right. There's a concern
11 about the election, about public
12 exposure, loyalty to the
13 Commissioner, not that they would be
14 based on any real fear, but that
15 there'd be public misinformation that
16 would be embarrassing, et cetera.
17 Are you suggesting that for those
18 reasons, Captain Ober should have
19 informed the Colonel and/or yourself
20 or someone in his chain of command of
21 that FBI probe for that reason?

22 A. Based on that reason alone?
23 No, not on that reason alone.

24 Q. Not on it alone, but I'm
25 asking if you believe that should've

1 been a consideration for Captain
2 Ober?

3 A. That should not have been a
4 consideration of his.

5 Q. So apparently if he did not
6 inform anyone in his chain of command
7 and made an error, you don't have any
8 reason to believe that he was
9 motivated by a political concern; do
10 you?

11 A. None, sir. No.

12 Q. Now, Colonel Coury, have you
13 ever given any thought to what Mr.
14 Ober possibly could have gained?
15 See, I picture this thing of him
16 being in a position with great
17 trepidations, fear, doubt, what do I
18 do. Somebody hands me a hot potato,
19 what do I do? Now, as it turns out,
20 I don't know how he's going to win,
21 but the point is, what possible thing
22 do you think he could've gained by
23 going to Colonel Hickes, and I'm
24 going to ask you about the
25 arrangements and relationship between

1 Colonel Evanko and Colonel Hickes,
2 was there bad politics there, bad
3 blood, or whatever, I want to ask you
4 about that in a minute. What would
5 Captain Ober gain by that? Is he on
6 a Hickes team? Is he a Hickes
7 advocate? Is he a Hickes supporter?
8 Is he in the politics of being
9 against Colonel Evanko? I mean, I
10 don't know. I keep looking for
11 reasons for this and I understand
12 what you're telling me and what your
13 reasons were. Now I want to ask you
14 what you're aware of.

15 Are you aware of any reason
16 why Captain Ober, aside from his
17 error in judgement about what the FBI
18 told him or allegedly told him, why
19 he would go to Colonel Hickes?
20 Colonel Conley was very offended by
21 Captain Ober's admission. Now I'm
22 asking you if you know of anything
23 that Captain Ober could've gained in
24 going to Colonel Hickes?

25 ATTORNEY CHRISTIE:

1 Excuse me, Counsel.
2 I'll object as to form. If
3 you're asking the question,
4 what do you think the
5 Plaintiff could've gained,
6 then I would object in form as
7 the question would be
8 speculative. The second
9 question, are you aware of any
10 reason why Captain Ober would
11 go to Colonel Hickes, then I
12 have no objection.

13 ATTORNEY BAILEY:

14 Okay. Well, let the
15 objection stand, but I'd like
16 to question to stand as it is
17 because I think asking you if
18 you know of anything he had to
19 gain, I think that is
20 legitimate in any way,
21 personal, political,
22 administratively, career-wise,
23 you know. I think that's a
24 legitimate question so I would
25 like the question to stand,

1 and you can respond.

2 A. I have not given that question
3 any prior thought. And as I sit
4 here, I can honestly tell you I don't
5 know what he could've gained.

6 BY ATTORNEY BAILEY:

7 Q. Was he wrong in your eyes ---
8 strike that.

9 Do you believe that he
10 actually believed that, he being
11 Captain Ober, do you think that he
12 actually believed that Colonel Evanko
13 was involved in selling jobs?

14 A. I do not know what he believes
15 and it wouldn't surprise me either
16 way.

17 Q. It wouldn't surprise you
18 either way?

19 A. Whether Captain Ober thought
20 he was or he wasn't involved in
21 selling jobs. I don't know what
22 Captain Ober thought ---.

23 Q. I know you don't know that,
24 but you reacted strongly on that, it
25 seemed to me, and said it wouldn't

1 surprise you either way. I can't
2 conceive of Captain Ober actually
3 believing Colonel Evanko would be
4 involved in something so petty.

5 A. And I'm not insinuating that
6 he did. I guess what I'm referring
7 to is that I've seen what I think are
8 some shortcomings in Captain Ober's
9 ability to rationalize and look at
10 operational investigations and
11 issues. And so I don't know how
12 Captain Ober would've viewed it.

13 Q. Would you tell a target of a
14 law enforcement investigation that
15 they were being investigated?

16 A. Are you saying Colonel Evanko
17 was a target? Is that what you're
18 saying to me? I mean ---.

19 Q. I'm asking you generally, you
20 know --- you are in a position to
21 pass judgment on his operational
22 skills. So you have given me
23 responses to numerous questions that
24 indicate to me that you have strong
25 background in operational skills.

1 Now, my question is real, real
2 simple. It's pretty kindergartenish,
3 as I see it.

4 Would you tell a target of an
5 investigation that they're being
6 investigated?

7 A. Colonel Evanko was not a
8 target of an investigation. To me, a
9 target is a named person.

10 Q. I didn't say he was. I asked
11 you if you would tell a target.

12 A. I would not tell a target nor
13 would I expect Captain Ober to tell a
14 target.

15 Q. That's very simple, isn't it?
16 Now, if I say Governor's office might
17 be involved in a problem, I would
18 think that that's pretty scary or
19 pretty heavy stuff if, you know ---
20 that's rather getting up there in the
21 scheme of things; isn't it?

22 A. I guess it depends on your
23 knowledge of the Governor's office.
24 There's a lot of people in the
25 Governor's office, you know, there

1 are a lot of secretaries and
2 clerical-type positions. Not
3 everybody in the Governor's office is
4 a high ranking political official.
5 Q. That's true. I'm sure that's
6 true. And neither was Monica
7 Lewinsky or neither were the
8 President's sex habits a political
9 issue, I guess, but hey, we impeached
10 a guy for it. At least some idiots
11 did. Now, to me, if somebody says
12 the Governor's office is an area
13 where I should be concerned about
14 because somebody might be involved,
15 who should you choose to tell in the
16 Governor's office? See, because I'm
17 going to assume that if the FBI
18 would've come to you, you would've
19 told the Colonel because he wasn't
20 specifically named and I cannot
21 believe the Colonel wouldn't call the
22 Governor's office and say hey,
23 because what you've told me about the
24 press and the embarrassment.

25 So who should Colonel Evanko

1 have told if Mr. Ober had told
2 Colonel Evanko? Who should he have
3 told in the Governor's office or
4 should he not have told anyone?

5 A. Well, first, I think it all
6 gets back to what I initially said
7 about what I thought Captain Ober
8 should've done when the FBI called
9 him. I don't think the Commissioner
10 or myself or anyone else would pick
11 up the phone and call the Governor's
12 office until we had some answers for
13 them. What is the credibility of the
14 trooper, I mean, had Captain Ober
15 even checked a BPR record of Trooper
16 Stanton? That should raise a flag
17 that, hey, we're not dealing with the
18 cream of the crop troopers here.
19 Here's a guy whose got a track
20 record, he's got some previous
21 history. And just based on that, I
22 would've been asking the FBI other
23 questions.

24 And from the information I
25 gathered is how I would handle it

1 from that point on. I believe that
2 Colonel Evanko, you know, would've
3 said, find out A, B, C, D and E,
4 let's find out what to do with it.
5 And when you put that package
6 together, you find that there's not a
7 whole lot there and then I would
8 think he would've called the
9 Governor's office.

10 Q. Okay. And do you think the
11 FBI should've answered, I mean, done
12 what you say? I mean, really, what
13 you're saying is saying the FBI --- I
14 mean, this is what you would've done.
15 You would have said to the FBI, hey,
16 I want to know what you're
17 investigating, who you're
18 investigating, I want the answers to
19 these questions or I'm telling
20 Colonel Evanko.

21 A. We do those things, they
22 haven't refused us. We have a good
23 working relationship with the FBI. I
24 mean, if they were concerned about
25 us, they wouldn't have come --- went

1 to Captain Ober in the first place.

2 Q. Then why didn't they go to
3 Colonel Evanko in the first place?
4 He had friends down there. Rick is
5 his friend.

6 A. Well, I don't think an agent's
7 going to jump to a Colonel's level.
8 I mean, I think we operate on some
9 operational peer levels.

10 Q. Why didn't Louie give him a
11 call?

12 A. It just isn't important
13 enough.

14 Q. He might be a target, but it's
15 not important enough. He might be a
16 target, the Governor's office, Ridge,
17 a friend of Bush, might be involved
18 --- I mean, I think it's ridiculous,
19 too, but the fact is ---.

20 A. It might be. It's three years
21 old information.

22 Q. Well, you know that now.

23 A. I mean, I think Louie's got
24 more important things to worry about,
25 three year old --- and Louie probably

1 knew it then. I mean, they knew it
2 was three year old information when
3 they called Captain Ober.

4 Q. Colonel Evanko's buddy let him
5 down. Let him down, should've picked
6 up the telephone and called him, say,
7 hey Colonel, what's going on in your
8 outfit out there, I think you've got
9 a bad cop. Didn't you use the term
10 bad cop somewhere? Somebody you did,
11 remember that?

12 A. Yeah, uh-huh (yes).

13 Q. Probably right. But how do
14 you know that then, sir? How do you
15 know that when somebody comes to you
16 and says, this might be a problem?
17 And there's a State Representative
18 and a State Senator and some guy's
19 running around shooting his mouth off
20 on a wire. And sure, this stuff
21 probably happens a lot of times, but
22 you know, do you have to treat the
23 information with respect? Don't you
24 have to respect the integrity of the
25 process according to your training?

1 A. But it doesn't mean that you
2 don't ask questions. It doesn't mean
3 you put blinders on and you just
4 accept whatever the FBI tells you.

5 Q. Well, I wouldn't accept
6 anything the FBI would tell me. I
7 admit that, but that's me and you
8 know how paranoid I am. Now, I want
9 to ask you this. If the FBI decision
10 to look at this thing at all was
11 revived, as the notes indicate that
12 --- I mean, the comments, the
13 interviews with the FBI agents
14 indicate that this was an old thing
15 that was revived.

16 Do you know any reason why
17 there wasn't a simple administrative
18 contact with the Pennsylvania State
19 Police like a letter or a letter to
20 the Commissioner, something like
21 that, saying hey, we want to look
22 into this or we want to meet with you
23 and talk about this?

24 A. No, I don't know.

25 Q. Were you ever able to figure

1 out or understand why their contact
2 was made to Captain Ober in IAD?

3 A. No, sir.

4 Q. Okay. One of the troubling
5 things for me, Colonel, you didn't
6 read, aside from your own statement,
7 you didn't read into that report
8 much, you didn't see it?

9 A. I have not seen that report,
10 sir.

11 Q. Okay. It's silly to waste
12 your time even asking you questions
13 about it then. Do you think
14 Lieutenant Colonel Hickes was wrong
15 in what he did?

16 A. In not informing the
17 Commissioner, is that what you're
18 referring to?

19 Q. Yeah, because I'm assuming
20 that if you take Darrell Ober out of
21 this, we know that a matter on or
22 about October 5th, Lieutenant Colonel
23 Hickes is told. I don't know of
24 anything that was, you know --- I
25 don't know of him being read his

1 A. I don't know, sir.

2 Q. Was Darrell needed out there

3 in Washington?

4 A. A darn good project manager

5 was needed out there.

6 Q. Szupinka couldn't do the job,

7 wasn't up to the task?

8 A. I'm sure he was up to the

9 task, but everybody needs help.

10 Q. Well, Szupinka was a pretty

11 doggone good worker in his own right,

12 isn't he?

13 A. And so is Major Werts on the

14 NGA, but to be able to assign to

15 somebody to that full time makes a

16 big difference.

17 Q. Well, I mean, Szupinka had

18 already been under way, had this

19 thing under way and was working on it

20 for about a year. He pretty much had

21 it under control, didn't he?

22 A. You'd have to ask Colonel

23 Westcott. I don't know. That was

24 under operations and I wasn't a real

25 part of that.

1 rights, maybe he was.

2 A. I don't know, sir.

3 Q. And you don't know because
4 you're not that familiar with the
5 investigation. You don't know why
6 Captain Ober would've been read his
7 rights?

8 A. I don't know, sir.

9 Q. Do you know whether Colonel
10 Hickes was transferred anywhere?

11 A. He was not, sir.

12 Q. Does the Commissioner have the
13 power to transfer him?

14 A. He's a cabinet appointee by
15 the Governor.

16 Q. Who is?

17 A. Colonel Hickes.

18 Q. Does he have friends over
19 there?

20 A. I don't know, sir.

21 Q. How's it possible to be a
22 Commissioner appointed by the
23 Governor's office and not have some
24 political friends over there? Is
25 that possible?

1 A. I don't know, sir.

2 Q. Do you know whether he and
3 Colonel Evanko get along?

4 A. I've seen them work together
5 and they have a good, professional
6 working relationship. All four of us
7 have been in the same company many,
8 many times and it's a good,
9 professional working relationship.

10 Q. And the participants, Colonel
11 Hickes and Colonel Evanko, follow the
12 rules and perform their professional
13 jobs the way they should; right?

14 A. Yes, sir.

15 Q. Have you ever seen them in any
16 kind of political dispute or involved
17 in a political dispute of some type?

18 A. No, I have not, sir.

19 Q. Do you know if Lieutenant
20 Colonel Hickes has a political
21 contact over in the Governor's
22 office?

23 A. I don't know, sir.

24 Q. Do you know who he reports to
25 over there, if he reports to anybody?

1 A. No, sir. I thought he
2 reported to the Commissioner and the
3 Commissioner reports to the
4 Governor's office.

5 Q. Do you report to anybody over
6 in the Governor's office?

7 A. No, sir.

8 Q. And who does the Commissioner
9 report to in the Governor's office?

10 A. It was Mark Campbell and right
11 now --- since I retired in January,
12 I'm not sure who the Deputy Chief of
13 Staff is, but that's who he would
14 report to. It was Lisa Baker, I
15 think, last time I think when I
16 retired. I'm not sure who it is now.

17 Q. Remember I had asked you some
18 questions about Major Koscelnak?

19 A. Yes.

20 Q. And you had a discussion with
21 Major Koscelnak and told him not to
22 treat Mr. Ober any differently than
23 anyone else?

24 A. Yeah.

25 Q. Who brought that subject up,

1 Koscelnak or you?

2 A. I think I did.

3 Q. And did Koscelnak say, yeah,
4 that was okay?

5 A. Yeah. Yes.

6 Q. Now, remember PEMA, when I
7 asked you about PEMA?

8 A. Yes.

9 Q. Doesn't PEMA --- wouldn't PEMA
10 give Ober some operational
11 experience?

12 A. No. See, I don't see it that
13 way. I mean, you're ---.

14 Q. September 11th, it wouldn't
15 have given him any operational
16 experience?

17 A. Well, it would in an
18 administrative sense. I mean, you're
19 going to conveying --- you're going
20 to be passing messages back and forth
21 from PSP to maybe Department of
22 Transportation, things like that.
23 And yeah, there would be some
24 operational benefit to that.

25 Q. Wasn't Ober interested in

100

1 serving under PEMA?

2 A. I don't recall, sir.

3 Q. Do you know why he was refused
4 an opportunity to serve on PEMA?

5 A. I don't know. I played --- I
6 had no involvement in that, sir. So
7 I'm not familiar with it.

8 Q. Is there a Major or a Colonel
9 Washington?

10 A. There was a Major Leonard
11 Washington.

12 Q. Yeah, Leonard Washington.
13 What's he have to do with PEMA?

14 A. Well, that PEMA position is
15 within the Bureau of Emergency and
16 Special Operations and Major
17 Washington was the Bureau Director at
18 that time. And the Bureau of
19 Emergency and Special Operations is
20 functionally located under the Deputy
21 Commissioner of Operations.

22 Q. Who is?

23 A. It would've been Lieutenant
24 Colonel Joseph Westcott until July of
25 2000.

101

1 Q. Do you know if Lieutenant
2 Westcott ever said that Ober wasn't
3 going to be reappointed to PEMA?

4 A. He never had that discussion
5 with me, sir.

6 Q. I think this would probably
7 be, for my purposes at least, a very
8 good point to break, not just time-
9 wise. Colonel, I am largely through
10 what I wanted to go over with you. I
11 don't think --- I might need another
12 hour, at the most. We could
13 reschedule that at some point. Where
14 did you say you were headquartered or
15 where do you work?

16 A. My office is here. My office
17 is here in Harrisburg.

18 Q. So you're local to the area
19 here?

20 A. Yes, sir.

21 Q. All right. I'll work with
22 your attorney and we'll try to pick
23 that up at a later time, okay?

24 A. Uh-huh (yes).

25 ATTORNEY BAILEY:

102

1 Why don't we
2 discontinue the deposition at
3 this point, okay?

4 VIDEOGRAPHER:

5 Okay. It's 4:42 p.m.
6 The deposition of Thomas Coury
7 will be continued at a later
8 date. Thank you.

9 * * * * *

10 DEPOSITION CONCLUDED AT 4:42 P.M.

11 * * * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF DAUPHIN)

3 C E R T I F I C A T E

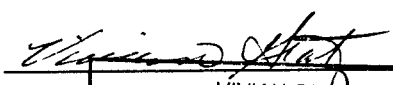
4 I, Vivian Gratz, a Commissioner of Deeds in and
5 for the Commonwealth of Pennsylvania, do hereby
6 certify:

7 That the witness was hereby first duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth; that the foregoing deposition was
10 taken at the time and place stated herein; and that
11 the said deposition was taken stenographically by me
12 and reduced to typewriting, and constitutes a true
13 and correct record of the testimony given by the
14 witness.

15 I further certify that the reading and signing
16 of said depositions were (not) waived by counsel for
17 the respective parties and by the witness.

18 I further certify that I am not a relative,
19 employee or attorney of any of the parties, nor a
20 relative or employee of counsel, and that I am in no
21 way interested directly or indirectly in this action.

22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and stamp this 17 day of April 2002.

24
25

VIVIAN GRATZ
Commissioner of Deeds
Commonwealth of Pennsylvania
My Commission Expires Nov. 7, 2005

Philip M. Conti.
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

May 22, 1999

Dear Tom:

Your attention is invited to the attached exchange of correspondence with Marian Hayman, the widow of Willis J. Hayman, who was one of the most colorful entertainers in our rodeo history. He was an outstanding horseman, and was featured playing his violin while standing on his motorcycle and circling the field.

The other incident was one involving a Stitt, who was and may still be working with Marc Infantino on the pictorial history book. He approached a coal region family, and was given artifacts which we will never see. Unfortunately, I cannot come across my notes. My contacts with the family were by phone, not written.

In my last two columns, I have devoted space to this problem of dealing with private collectors. Since I have taken time to do that, I'm sure the message will get across. So, perhaps it might be best to set this matter aside and see what happens. Should there be a repeat of this nature, I will contact you immediately. Let's hope that does not happen.

It is indeed my pleasure to be working with you on this PSP-HEMC project. Let's hope that we will by the year 2005 have something we can truly be proud of.

Warmest regards,



Copy #1 (part of #2)

ENCLOSURE 3
PAGE 1 OF 1

STD-FW-1, 9-86

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

DATE: December 23, 1999

SUBJECT: Supervisory Inquiry IAD# 1999-409

TO: Director, Bureau of Professional Responsibility

FROM: Lt. Colonel Thomas K. Coury *l*
Deputy Commissioner of Administration

ENCLOSURES: (1) Supervisory Inquiry, IAD# 1999-409, prepared by Corporal Robert D. Mrgich, Bureau of Professional Responsibility, dated August 23, 1999, with attachments.

(2) Notification of result of investigation directed to Director, Bureau of Technology Services, Attn: Captain Darrell G. Ober, in regards to the above inquiry.

1. After careful review of Enclosure (1), I have concluded that the allegation is unfounded. No additional inquiry or formal investigation is warranted in this case.
2. It was alleged that Captain Ober had used his position of being a member of the Centennial Book Committee to obtain Pennsylvania State Police historical items for his personal use. However, examination of the facts and circumstances of this investigation indicate that this allegation is not true.
3. In 1995 Captain Ober corresponded with two Department retirees or their caregivers. He later received historical items from these individuals. Written correspondence to the individuals as contained in Enclosure (1) demonstrate that at no time did Captain Ober identify himself as a member of the museum project or of the Centennial Book Committee. Additionally, Captain Ober obtained the historical items in 1995, and he did not become a member of the Centennial Book Committee until August 1996.
4. Enclosure (2) was sent to Captain Ober advising him of my determination in this case. Unfortunately, the complainant in this case recently past away and no notification of the results of the investigation can be made.

*Coury #2 (66p95)**1/67* *anc*

COMMONWEALTH OF PENNSYLVANIA
STD-502X REV (11/95)

DESK MEMORANDUM

SUBJECT :

Supervisory Inquiry #1999-409

TO (NAME & ADDRESS) :

Deputy Commissioner of Administration

FROM (NAME & ADDRESS) :

Acting Director, Internal Affairs Division *JRB*
Bureau of Professional Responsibility

DATE SENT:

12/03/99

DATE NEEDED :

<input type="checkbox"/>	PLEASE CALL:	<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	SEE ME
<input type="checkbox"/>	RETURNED YOUR CALL	<input type="checkbox"/>	AS REQUESTED	<input type="checkbox"/>	COMMENT
<input type="checkbox"/>	INFORMATION & FILE	<input type="checkbox"/>	PREPARE REPLY/REPORT	<input type="checkbox"/>	NOTE AND RETURN
<input checked="" type="checkbox"/>	NECESSARY ACTION	<input type="checkbox"/>	SIGNATURE	<input type="checkbox"/>	

RECEIVED BY :

DATE :

TIME :

ROUTE	INITIAL	DATE	ROUTE	INITIAL	DATE
<i>EO Dep. Admin.</i>					

MESSAGE:

Subject inquiry is forwarded for whatever action you deem appropriate. Attached please find copies of adjudication responses to complainants/members from several Troop Commanders with their Endorsements. Remember you are not restricted to a conclusion of Sustained, Not Sustained or Infounded. You can word as you feel necessary. Verbiage as "appropriate supervisory action taken", appropriate administrative action was taken", "no further administrative action necessary," etc., will suffice. Also attached find a copy of the Endorsement and Documentation of Action Taken section of the proposed Supervisory Special Order for your information. If you need anything else let me know.

pls Do AN Admin Findings

Coury #2

2/67

COMMONWEALTH OF PENNSYLVANIA
STD-502 REV. 5-97

DESK MEMORANDUM

SUBJECT

Supervisory Inquiry #1999-409

TO (NAME & ADDRESS)

Director,

Bureau of Professional Responsibility

FROM (NAME & ADDRESS)

Acting Director, Internal Affairs Division
Bureau of Professional Responsibility *JRB*

DATE SENT

October 5, 1999

DATE DUE

PLEASE CALL

APPROVAL

SEE ME

RETURNED YOUR CALL

AS REQUESTED

COMMENT

X

INFORMATION & FILE

PREPARE REPLY/REPORT

NOTE AND RETURN

X

NECESSARY ACTION

SIGNATURE

X

Review

RECEIVED BY

DATE

TIME

ROUTE

INITIAL

DATE

ROUTE

INITIAL

DATE

*DEP. COM. ADMIN.**Cap Points**OP**Dep Admin**TC**11/27**Dep BRR**DMC**12/02/99*

MESSAGE:

The subject inquiry is being forwarded for your review and any action you deem appropriate.

*FORWARDED FOR YOUR REVIEW, AS PER MAJOR CONLEY,
11/12/99. THIS IS THE ORIGINAL REPORT.**H. Brown*

cc: IAD FILE

*For possible violations**CALL me**File**3/67*

BPR File Copy 3

COMMONWEALTH OF PENNSYLVANIA
STD-502 REV. 5-97

DESK MEMORANDUM

SUBJECT

Correspondence from Philip Conti

TO (NAME & ADDRESS)

Deputy Commissioner of Administration

FROM (NAME & ADDRESS)

Director, Bureau of Professional Responsibility

DATE SENT

11/19/99

DATE DUE

	PLEASE CALL		APPROVAL		SEE ME
	RETURNED YOUR CALL		AS REQUESTED		COMMENT
X	INFORMATION & FILE		PREPARE REPLY/REPORT		NOTE AND RETURN
	NECESSARY ACTION		SIGNATURE		

RECEIVED BY

DATE

TIME

ROUTE	INITIAL	DATE	ROUTE	INITIAL	DATE

MESSAGE:

As discussed, we need a Special Order from the Commissioner prohibiting the reference of, "as a Pennsylvania State Police member," when members solicit retirees for artifacts, etc.

JLB

COMMONWEALTH OF PENNSYLVANIA
STD-502 REV. 5-97

DESK MEMORANDUM

SUBJECT

Supervisory Inquiry #1999-409

TO (NAME & ADDRESS)

Director,
Bureau of Professional Responsibility

FROM (NAME & ADDRESS)

Acting Director, Internal Affairs Division *JRB*
Bureau of Professional Responsibility

DATE SENT

October 5, 1999

DATE DUE

	PLEASE CALL		APPROVAL		SEE ME
	RETURNED YOUR CALL		AS REQUESTED		COMMENT
X	INFORMATION & FILE		PREPARE REPLY/REPORT		NOTE AND RETURN
X	NECESSARY ACTION		SIGNATURE		

RECEIVED BY

DATE

TIME

ROUTE	INITIAL	DATE	ROUTE	INITIAL	DATE
DEP. COM. ADMIN.					

MESSAGE:

The subject inquiry is being forwarded for your review and any action you deem appropriate.

FORWARDED FOR YOUR REVIEW, AS PER MAJOR CONLEY,
11/12/99. THIS IS THE ORIGINAL REPORT.

H. Brown

IC: IAD FILE

5/67

BUREAU OF PROFESSIONAL RESPONSIBILITY

Date

IAD #

DB #

1. Major Hawthorne N. Conley

2. Lieutenant John R. Brown

3. Sgt. Lisa S. Christie

4. -Cpl. Noel Ruiz

5. A.A. Donna J. Blouch

6. CPT. MARGIE HCHC turned anything over to Museum Committee
 Capt Ober #657-42315. Poss - 4 yrs. ago.

• LETTER TO BE SENT •

Message:

Original report submitted.
 There is additional info.
 Refer to Attachments # 17 & 18.

The next question is
 where do we go from here.
 Capt. Ober told me on 8/31/99
 he received a letter from Col.
 Cowan removing him from
 the Museum Committee.
 Col. is not about this.

6/67

Have you given any items to the museum
 Did promise you could give any items to the museum
 WHEN APPOINTED to board.
 When items from BLOCKS/HAYMAN
 HOW FIND THE NAMES OF POSD/BLOCKS - HAYMAN
 WHEN LAST CONTACT

ANY CONTACT SINCE GOT THESE ITEMS

How did you get items from POSD - HAYMAN BLOCKS

How did you get items from BLOCKS HAYMAN

HAVE you gotten any items for your collection since being on
 the museum committee.

1 SE RIGHT 2609 -
 before MARKET PLACE
 TOO FAR

Do you feel it was a conflict when you received the items from
~~Conflict of interest~~ BLOCKS/HAYMAN

9/7 - ADVISED CAN HAVE A REP. IF WANT ONE

Do you feel you misrepresented himself to BLOCKS/HAYMAN

Both ladies say they have your business card. ~~they~~ the lady
~~they~~ they ~~and~~ with it. Why were they included in your letter.

DID YOU PAY FOR THE ITEMS
 IF NOT DID YOU OFFER TO.

DID YOU REC EITHER OF THEM PRIOR TO RECEIVING ITEMS / SEALING of
 when BLOCKS mailed items and paid for shipping

A complaint has been made that you / what is significant for understanding the items

7/07

Date

11/12/99

IAD #

1999-409

DB #

1. Major Hawthorne N. Conley

14 JWC

2. Lieutenant John R. Brown

14 JRB

3. Sgt. Lisa S. Christie

14

IAD FILE

4. Cpl. Noel Ruiz

()

5. A.A. Donna J. Blouch

()

6. C.T. Brenda Stutzman

()

- LETTER TO BE SENT -

Message:

Cpl. Rain delivered to
Lt. Col. Conroy 11/12/99, original
copy, file folder still on
your desk.

8/67

4

COMMONWEALTH OF PENNSYLVANIA
STD-502 REV. 2/83

DESK MEMORANDUM

SUBJECT

SUPERVISORY INQUIRY, FAD #1999-409	
TO (NAME & ADDRESS) DIR, BPR	FROM (NAME & ADDRESS) ACTING DIR, IAD
DATE SENT	DATE NEEDED

PLEASE CALL:	APPROVAL	SEE ME
RETURNED YOUR CALL	AS REQUESTED	COMMENT
X INFORMATION & FILE	PREPARE REPLY / REPORT	NOTE AND RETURN
X NECESSARY ACTION	SIGNATURE	

RECEIVED BY	DATE	TIME
ROUTE	INITIAL	DATE

MESSAGE:

The subject inquiry is being forwarded for your review and any action you deem appropriate.

9/67

STD-501, 9-86

COMMONWEALTH OF PENNSYLVANIA

DATE: February 12, 2001

SUBJECT: Supervisory Inquiry IAD #1999-409

TO: Lieutenant Colonel Hawthorne N. Conley
Deputy Commissioner of Administration

FROM: Major W. John Pudliner *WJP*
Director, Bureau of Professional Responsibility

REFERENCES: (a) Supervisory Inquiry IAD #1999-409, dated August 23, 1999
Submitted by Corporal Robert D. Mrgich, Bureau of Professional Responsibility

1. On February 12, 2001, I contacted retired Major Matthew Hunt via telephone at (717) 545-4565. Mr. Hunt related that he had spoken to one Lee J. Poso from Rome, New York approximately one week ago. He stated that Captain Darrell Ober had contacted Ms. Poso's friend, retired Corporal James B. Brooks, regarding Pennsylvania State Police memorabilia. Mr. Brooks, who is now deceased, sent three boxes of memorabilia to Captain Ober. Retired Major Hunt indicated that Ms. Poso told him that Captain Ober had indicated to Mr. Brooks that he represented himself as a member of the Pennsylvania State Police Museum Committee.

2. Ms. Poso had been previously interviewed by Corporal Robert D. Mrgich during the supervisory Inquiry listed in Reference (a). On August 4, 1999, Ms. Poso submitted a handwritten letter (enclosure 6 of Reference a) to Corporal Mrgich. In the letter, she indicates that Mr. Brooks was aware that Captain Ober did not represent the Museum Committee.

3. Ms. Poso further indicated to retired Major Hunt that Captain Ober had contacted her, via telephone, approximately one month ago and made inquiry as to whether she had been contacted by any members of the Pennsylvania State Police regarding his activities.

10/67

STD-501, 9-88

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

DATE: December 23, 1999

SUBJECT: Supervisory Inquiry IAD# 1999-409

TO: Director, Bureau of Technology Services
Attn: Captain Darrell G. Ober

FROM: Lt. Colonel Thomas K. Coury *TKC*
Deputy Commissioner of Administration

REFERENCE: (a) Supervisory Inquiry, IAD# 1999-409, prepared by Corporal Robert D. Mrgich, Bureau of Professional Responsibility, dated August 23, 1999, with attachments.

1. After careful review of Enclosure (1), I have concluded that the allegation is unfounded. No additional inquiry or formal investigation is warranted in this case.
2. It was alleged that you had used your position of being a member of the Centennial Book Committee to obtain Pennsylvania State Police historical items for your personal use. However, the facts and circumstances of this investigation indicate that this allegation is not true.
3. In 1995 you corresponded with two Department retirees or their caregivers and later received historical items from these individuals. Written correspondence to the individuals as contained in Enclosure (1) demonstrate that at no time did you identify yourself as a member of the museum project or of the Centennial Book Committee. Additionally, you obtained the historical items in 1995, and did not become a member of the Centennial Book Committee until August 1996.
4. No administrative action will be taken and this Supervisory Inquiry is closed.

FILE

11/67

STD-501X (9-86)

Commonwealth of Pennsylvania

Date: August 23, 1999

Subject: Supervisor Inquiry – IAD – 1999-409

To: Lieutenant John R. Brown
Acting Director, Internal Affairs Division

From: Corporal Robert D. Mrgich *ROM*
Internal Affairs Division, Central Section

Enclosures:

- (1) SP 1-101, Use of Force or Complaint Reception and Processing Worksheet dated 05/27/99.
- (2) Correspondence to Mr. CONTI from Mrs. HAYMAN.
- (3) Correspondence to Lieutenant Colonel COURY from Mr. CONTI dated May 22, 1999.
- (4) Correspondence to Major William REGAN (Retired) from Mr. CONTI dated July 9, 1999.
- (5) Correspondence to Corporal MRGICH from Mr. CONTI dated July 12, 1999.
- (6) Correspondence to Corporal MRGICH from Ms. Lee POSO dated 4 Aug 1999.
- (7) Captain Darrell G. OBER's business card.
- (8) Correspondence to Mr. BROOKS from Darrell G. OBER dated March 31, 1995.
- (9) Correspondence to Mr. BROOKS from Darrell G. OBER dated June 12, 1995.

12/67

Supervisory Inquiry
August 12, 1999
Page 2

- (10) Card addressed to Mr. BROOKS from Darrell G. OBER dated 5/18/95.
- (11) Correspondence to Captain OBER from James R. BROOKS dated 5/21/1995.
- (12) Internet results of search for telephone number for W J HAYMAN.
- (13) Correspondence to Mrs. HAYMAN from Darrell G. OBER dated June 28, 1995.
- (14) Correspondence to Mrs. HAYMAN from Darrell G. OBER dated September 21, 1995.
- (15) Correspondence to Mrs. Willis J. HAYMAN from Philip M. CONTI dated March 15, 1999.
- (16) Pennsylvania State Police Pictorial Centennial History Book Project Booklet of General Information.

1. This investigation was conducted upon receipt of a Use of Force or Complaint Reception and Processing Worksheet, (*Enclosure #1*). Also included is correspondence from Mrs. HAYMAN to Mr. CONTI (*Enclosure #2*) and correspondence from Mr. CONTI to Lieutenant Colonel COURY (*Enclosure #3*). Lieutenant Colonel COURY received all three enclosures from Mr. CONTI and submitted them.

It is alleged that Captain Darrell G. OBER, while Director, of the Systems and Process Review Division, solicited artifacts from retired personnel and their families by using his rank and post with the Department to give the impression that he was collecting the items for the Museum.

2. On July 16, 1999, this officer contacted Philip M. CONTI (717) 564-8088. This was in reference to the correspondence (*Refer to Enclosure #4*) he sent Major William J. REGAN, (Retired) concerning Captain OBER's aggressive actions in soliciting and obtaining artifacts from retired personnel and their families.

Mr. CONTI related that he has corresponded with Marian HAYMAN, widow of retired Trooper Willis J. HAYMAN. Mrs.

13/67

Supervisory Inquiry
August 12, 1999
Page 3

HAYMAN related that in 1995, after her husband died, she gave Captain OBER some rodeo books and pictures (*Refer to Enclosure #2*).

Mr. CONTI also related on July 9, 1999, that he received a shipment of artifacts from Ms. Lee POSO, surviving partner of retired Trooper James R. BROOKS. Mr. CONTI said Ms. POSO advised him that she had been solicited by and gave assorted uniform items to Captain OBER.

Mr. CONTI stated he has not spoken to either one of the above individuals, but has corresponded with them by mail only. He mailed this officer correspondence with a telephone number of Ms. POSO, but did not have a telephone number for Ms. HAYMAN (*Refer to Enclosure #5*).

3. On July 27, 1999, at 0850 hours this officer spoke with Ms. POSO (F-67), (315) 337-1905. This telephone conversation was in reference to Captain OBER obtaining Pennsylvania State Police Memorabilia from Mr. BROOKS.

Ms. POSO was first asked how Captain OBER identified himself to her when he called and asked to speak to Mr. BROOKS. "I'm not sure, and I do not want to say without being positive. All I remember is him saying his last name."

Ms. POSO related that Captain OBER called Mr. BROOKS in 1995 and spoke to him about the State Police and State Police Memorabilia. "Captain OBER told Jim that he collects old items and would be interested in any items that Jim had. He said that he has a little room in his house where he wanted to display the items. Jim was glad someone took an interest in the items and was happy to give them to him. Captain OBER offered to pay for the items, but Jim did not want anything for them. We then mailed the items to him" (*Refer to Enclosure #6*).

"Captain OBER invited Jim over to his house so he could see the room where he displays the items, but Jim did not go. After we mailed the items, we received a fruit basket from Captain OBER." Mr. BROOKS had given the memorabilia to Captain OBER before he was aware that the State Police was creating a Museum. Ms.

14/67

Supervisory Inquiry
August 12, 1999
Page 4

POSO said that when Mr. BROOKS learned of the museum, he said, "I wish the items I gave Captain OBER would go to the museum, but I gave them to him and I won't ask for them back. I gave them to him and he can do with them what he wants."

Ms. POSO was asked if Mr. BROOKS ever told Captain OBER that he wanted the items to go to the Museum. She replied, "No, I'm positive that he did not, he would have liked them to, but he did not." Ms. POSO added, "I wish they could do something, that is where the stuff belongs. Do you think if I offer to pay Captain OBER for the items he would return them to me?" This officer advised that was not something I could answer.

Ms. POSO was asked where she thought the items were going to be displayed. She stated, "I believe his intent was to keep them for himself. He called back after he received the items from Jim and mentioned that he may give them to the museum."

When asked if Captain OBER ever mentioned how he got Mr. BROOKS's telephone number, Ms. POSO related that she wondered the same thing. Ms. POSO did say that Captain OBER mentioned a name of an individual who gave the number to him, but she could not recall the name.

Ms. POSO stated that Captain OBER sent Mr. BROOKS a business card, two letters and a card. Ms. POSO will send this officer the letters so copies can be made and attached to this report.

Ms. POSO ended the conversation by stating, "I don't think he did anything wrong."

This officer received the above mentioned items from Ms. POSO. Included with the above items was a letter written by Mr. BROOKS, which was sent to Captain OBER (*Refer to Enclosures #7, #8, #9, #10 & #11*).

4. On July 29, 1999, this officer used the Internet to obtain Mrs. HAYMAN's telephone number (724) 946-3375 (*Refer to Enclosure #12*).

On August 6, 1999, at 0800 hours, this officer spoke with Mrs. Marian HAYMAN (F-89), (724) 946-3375. This was in reference

15/67

Supervisory Inquiry
August 12, 1999
Page 5

to her giving State Police Memorabilia to Captain OBER. This officer made arrangements to meet her at her residence, 284 East Branch Road, Mercer, PA 16137-3308 on August 10, 1999. On August 10, 1999, at 1035 hours this officer met with Mrs. HAYMAN at her residence.

Mrs. HAYMAN stated that Captain OBER called her house in the spring of 1995, shortly after her husband died. He spoke to her about the State Police and her late husband, Willis HAYMAN. "He told me that he worked in Mercer before and that he knew Bill. I did not recognize his name, but I figured he knew Bill because he had my telephone number."

"He said he was interested in Old State Police items that I would have in the house and if I would be willing to donate them to the Museum they are forming. He said he would give me time to look through Bill's things and then he would call me back. When he called back, he arranged to come to the house and pick up the items. I didn't give him anything real important, just some rodeo books and pictures."

"When he came to the house, he identified himself as Captain Darrell OBER and gave me one of his business cards. I sent the business card to Mr. CONTI in one of the letters I sent him in March April or May of 1999. He offered to take to me to lunch, but I didn't go. He sat and visited for a while. He seemed very nice."

When asked what she thought was going to happen to the items she gave Captain OBER, she responded, "I thought they were going to be displayed by the State Police somewhere. Didn't he give the things to the Museum? Why did he keep them? What is he going to do with them?"

Mrs. HAYMAN was asked to clarify what she believed Captain OBER intended to do with the items. She responded, "I am pretty sure he said he was collecting for the museum."

This officer took two letters sent to Mrs. HAYMAN by Captain OBER. One letter referenced the telephone conversation and the other referenced the meeting and receiving the items from her (Refer to Enclosure #13 & #14).

16/67

Supervisory Inquiry
August 12, 1999
Page 6

Mrs. HAYMAN gave this officer a copy of correspondence she received from Mr. CONTI reference photographs she sent to him (*Refer to Enclosure #15*).

5. This officer received the Pennsylvania State Police Pictorial Centennial History Book Project of General Information from Lieutenant John R. BROWN. The booklet lists the Project Member names to include Captain Darrel OBER (*Refer to Enclosure #16*).

17/67

STD-501X (9-86)

Commonwealth of Pennsylvania

Date: September 1, 1999

Subject: Supervisor Inquiry – IAD – 1999-409 - Supplemental Report

To: Lieutenant John R. Brown
Acting Director, Internal Affairs Division

From: Corporal Robert D. Mrgich
Internal Affairs Division, Central Section

Enclosures:

- (17) Correspondence to Corporal MRGICH from Mr. CONTI dated August 23, 1999.
- (18) Correspondence to Corporal MRGICH from Mr. CONTI dated August 29, 1999.
- 6. On August 25, 1999, this officer received Enclosure #17 from Mr. CONTI.
- 7. On August 31, 1999, this officer received Enclosure #18 from Mr. CONTI.

18/67

PSP-501X

COMMONWEALTH OF PENNSYLVANIA

DATE: October 10, 1999

SUBJECT: Supervisory Inquiry - IAD 1999-409 - Supplemental Report

TO: Lieutenant John R. Brown
Acting Director, Internal Affairs Division

FROM: Corporal Robert D. Mrgich^{COM}
Bureau of Professional Responsibility
Internal Affairs Investigator - Central Section

ENCLOSURES:

- (19) SP 1-104, Pennsylvania State Police Administrative Warning issued to Captain Darrell G. OBER dated September 10, 1999.
- (20) SP 1-102, Pennsylvania State Police Notification of Inquiry issued to Captain Darrell G. OBER dated September 10, 1999.
- (21) One Maxell C90 Cassette Tape containing interview of Captain Darrell G. OBER by Corporal Robert D. MRGICH on September 10, 1999.
- (22) Transcription of Interview with Captain Darrell G. OBER by Corporal Robert D. MRGICH on September 10, 1999.

8. On September 10, 1999, at 0812 hours, this officer interviewed **Captain Darrell G. OBER**, in the Bureau of Technology Services Building, Conference Room number one, 2629 Market Place, Harrisburg, PA 17110. He has been a member of the Department for eighteen years. He is currently assigned as the Systems Integrator Procurement Team Leader for Technology Services.

Captain OBER was advised of his Administrative Warnings (*Refer to Enclosure #19*) and Notification of Inquiry (*Refer to Enclosure #20*) of which he both acknowledged understanding and signed. Captain OBER had Corporal Michael A. RUDA present acting as his Union Representative. This officer advised Captain OBER that the interview would be tape recorded (*Refer to Enclosure #21*). The interview was subsequently transcribed.

Captain OBER stated that he is not a member of the Pennsylvania State Police Museum committee and has never been. He also cited that he never discussed the museum with Mr. BROOKS or Ms. HAYMAN.

19/67

Supervisory Inq.
IAD #1999-409
Page 2

"At no time have I ever, in any way, shape or form, ever represented to anyone that I am a member of the Pennsylvania State Police Museum Committee or using any leverage of any source in my association with this Department to add to my private collection."

For details of the interview (*Refer to Enclosure #22*).

20/67

101 (1-93)

PENNSYLVANIA STATE POLICE

BPR CONTROL NUMBER

USE OF FORCE OR COMPLAINT RECEPTION AND PROCESSING WORKSHEET

IAD 1999-409

COMPLAINT INFORMATION

NAME	FIRST LT. COL. THOMAS	M.I. K	LAST COLURU
HOME ADDRESS	STREET/P.O. BOX DEPUTY COMM. ADMINISTRATION		
	CITY	STATE	ZIP CODE
EMPLOYER	NAME & ADDRESS		WORK PHONE #

NON-COMPLAINT USE OF FORCE REPORT

☐ SHOOTING INCIDENT☐ PHYSICAL FORCE

LEGAL INTERVENTION

SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)

NAME	FIRST DARRELL	M.I. G.	LAST OBER
LOCATION	TROOP/BUREAU DH Q	STATION/DIVISION BUR. TECH. SERVICES	JOB ASSIGNMENT CAPTAIN
204-42-0484		DOE 7/20/81	← TO BE COMPLETED IF KNOWN OR AVAILABLE

DETAILS OF ALLEGATION

TYPE OF ALLEGATION (CHECK ONE)	<input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> VERBAL ABUSE <input type="checkbox"/> CRIMINAL CONDUCT <input type="checkbox"/> OTHER (Please explain)	<input type="checkbox"/> IMPROPER CONDUCT ON DUTY <input checked="" type="checkbox"/> IMPROPER CONDUCT OFF DUTY <input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE ON DUTY
IT/STREET TWP/BORO COUNTY DATE TIME DAY		

SYNOPSIS

COMP. RECEIVED CORRESPONDENCE FROM PHILIP M. CENTI AND A LETTER FROM MRS. WILLIS J. HAYMAN THE WIDOWER OF WILLIAM HAYMAN, A DECEASED RETIRED TROOPER FROM THE RODEO DETAIL. INFORMATION CONTAINED THEREIN IS THAT CAPTAIN OBER CONTACTED AND MET WITH HER AFTER HER HUSBAND'S DEATH AND OBTAINED RODEO BOOKS AND PICTURES. THERE IS ALSO MENTION THAT CAPTAIN OBER IS NOT

RECEPTION DATA

RECEIVED	TIME RECEIVED	LOCATION RECEIVED	TROOP/BUREAU	STATION/DIVISION
5/27/99	1235		Q-BPR	
RECEIVED BY	NAME	SSN		
	LT. JOHN R. BROWN			

FOR BUREAU USE

INVESTIGATOR	NAME	SSN	PAGE	OF
	CPL. MRSICH, IAD CENTRAL			
CONTROL NO. ISSUED BY	DATE ASSIGNED	DATE DUE	SP 1-101A	LIMITED INVESTIGATION
LT. L.S. CHRISTIE	5/27/99	7/6/99	<input type="checkbox"/>	<input type="checkbox"/>

ENCLOSURE

PAGE

OF

11/6/97

ADDITIONAL SUBJECTS OF ALLEGATION/REPORT

NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
DOE		← TO BE COMPLETED IF KNOWN OR AVAILABLE	
NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
DOE		← TO BE COMPLETED IF KNOWN OR AVAILABLE	
NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
DOE		← TO BE COMPLETED IF KNOWN OR AVAILABLE	

SYNOPSIS (CONT.) *A REPRESENTATIVE OF THE RP MUSEUM PROTECT.*

SEE ATTACHED CORRESPONDENCE.

M-23

22

Dear Phil Conti -

I'll have to explain for I forgot about in 1995, after Bill died I received a letter & a visit from Darrell Ober & I gave him some things of roses books & a picture. You can check with him for I am sorry to have forgot all about it. I had a stroke in '91 & my right side of my head was not too smart at that time.

I think that the pictures in the envelope will help.

I hope you can stop some time ^{we} can meet - Remember I am

89

Probably maybe we met in the several time we can to future meetings.

It has been very nice talking with you. I have enjoyed reading the Pictures Slaps you sent.

ENCLOSURE 2

PAGE 1 OF 1

23/6

Philip M. Conti.
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

May 22, 1999

Dear Tom:

Your attention is invited to the attached exchange of correspondence with Marian Hayman, the widow of Willis J. Hayman, who was one of the most colorful entertainers in our rodeo history. He was an outstanding horseman, and was featured playing his violin while standing on his motorcycle and circling the field.

The other incident was one involving a Stitt, who was and may still be working with Marc Infantino on the pictorial history book. He approached a coal region family, and was given artifacts which we will never see. Unfortunately, I cannot come across my notes. My contacts with the family were by phone, not written.

In my last two columns, I have devoted space to this problem of dealing with private collectors. Since I have taken time to do that, I'm sure the message will get across. So, perhaps it might be best to set this matter aside and see what happens. Should there be a repeat of this nature, I will contact you immediately. Let's hope that does not happen.

It is indeed my pleasure to be working with you on this PSP-HEMC project. Let's hope that we will by the year 2005 have something we can truly be proud of.

Warmest regards,



ENCLOSURE 3
PAGE 1 OF 1

24/67

Philip M. Conti
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

July 9, 1999

Dear Bill:

Today I received another shipment of artifacts from the family of James Brooks. In the accompany correspondence I was informed that Jim, who died last December at the age of 95, had been solicited by Captain Darryl Ober to whom Jim gave some uniform items. These items were not specifically described.

This is another incident in which Ober has approached our aged retirees to solicit artifacts. In each case, he takes pain to identify himself as a State Police captain, showing them his business card indicating his rank and post. To date, I have not been able to prove that he has actually misrepresented himself as an official of PSP-HEMC in seeking items for the museum. But, he is coming close to crossing the line. He is using his rank and post with the Department to give the impression at least that he is somehow connected with our museum effort. If we cannot prove him doing something criminally wrong, I believe he is doing something for which he could be disciplined by the Department.

You, Jim Hazen and I have spoken to him at one time or another about his aggressive actions in obtaining artifacts from our retired personnel and their families. Apparently he chooses to set aside these admonishments.

I understand that he now comes under the command of Lt. Colonel Hickes. I would suggest that you get in touch with Hickes, and let him know that we are not pleased with Ober's competition, especially the method he pursues.

Warmest regards,

Phil

ENCLOSURE 4
PAGE 1 OF 1

25/27

Philip M. Conti
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

July 12, 1999

Corporal Robert D. Mrgich
Internal Affairs Division
Pennsylvania State Police
7820 Allentown Boulevard
Harrisburg, Pennsylvania 17112

Dear Corporal:

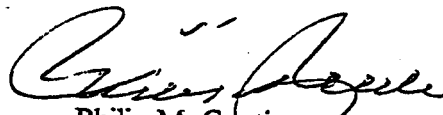
I received your phone message today, and am sorry I was not at home to talk with you.

Mrs. Willis Hayman last wrote to me on April 12, 1999. She was then staying with her daughter, Sally MacDonald, 25611 Purple Sage, San Juan Capistrano, California 92675. Mrs. Hayman (Marian) was 89 her last birthday, I believe, and is not in good health. So, I have no idea how long she will be in California.

Mrs. Hayman's home address is: 284 E. Branch Road, Mercer, Pa. 16137. I am sorry to report that I can find no record of her phone number. Willis J. Hayman died January 10, 1995.

If I can be of any further help to you, please do not hesitate to get in touch.

Sincerely,



Philip M. Conti
Lt. Colonel PSP (Ret.)

ENCLOSURE 5
PAGE 1 OF 1

26/6

4 Aug 1999

To: Corporal Robert D. McGich
Pennsylvania State Police
7820 Allentown Boulevard
Harrisburg, PA 17112

Thank you for sending me a
stamped envelope.

I did mention that Capt. Darrell ^{aber} called
and I answered the phone. Mr. James B.
Brook stated that someone had given
him his name (Jim's) and told him
that Jim had some artifacts of his
time in State Police - such as
uniforms, hats, badges. He also called
me and asked if there was his police
badge - but that was pinned in his
casket, or were there any jewelry like
rings, etc.

Shortly after, Jim sent him 3 large boxes
of clothing, hats, etc. Jim said to me
I should have sent them to museum.
He wasn't aware that one was in 6

ENCLOSURE

27/6

II

progress. He was disappointed, but said very little about it.

I helped Jim pack (3 large boxes or more) and they were heavy I carried them to the UPS Service to be mailed. He (Jim) had a large foot locker which he had for storage for his police uniforms, clothing, etc. I sent him (I believe) newspaper clipping from Jim's scrap^{book} about Berkeley Strike.

If I can be of any further help, please call.

Thank you for taking an interest in Jim's belongings. He was a great person, and was always there when someone was in need.

Ms Lee-Pass

+ Atch - Ltr Ltr 31 Mar 1995
 - Ltr Ltr 12 Jun 1995
 - Ltr Ltr 12 Aug 1999

ENCLOSURE

6

2

2

28/67

12

PENNSYLVANIA STATE POLICE
Bureau of Professional Responsibility
Systems and Process Review Division



DARRELL G. OBER
Captain

1800 Elmerton Ave.
Harrisburg, PA 17110
PH: (717) 783-3729
(717) 783-5145

ENCLOSURE 7
PAGE 1 OF 1

29/67

March 31, 1995


Dear Mr. Brooks:

Thank you for taking the time to speak with me yesterday about the Pennsylvania State Police. Since I began collecting State Police and Highway Patrol memorabilia, I have been afforded many such wonderful opportunities to speak with some of our retirees and their families.

And what a small world it indeed is! To think that we have both served in some of the same Troops and Stations and that you have patrolled in my hometown on horseback is quite amazing. I really enjoyed talking with you about your remembrances of the job. How thankful and proud I am to be part of such a great Department with such tradition and heritage. I began collecting memorabilia out of my respect and admiration for the days gone by in the department. I guess you could say I am sort of a preservationist. My wife recently retired from the State Police as a clerk/typist and enjoys collecting as much as I do. It truly has become a family hobby.

Thank you so much for being willing to share some of the things you have with me. I have been on cloud nine since speaking with you. The patches, spurs, books, bookends, chaps, and helmet medallion all sound extremely interesting. I collect everything from photographs to guns. As I said to you, I would be honored to add your things to my collection and will guarantee you they will be proudly displayed and cared for. I will be more than happy to pay you for these things but you say that is out of the question. I have an idea in mind that I think will please you as a way to show my appreciation. I am anxious to hear for you and am enclosing my address, business card and telephone number.

Sincerely,



Darrell G. Ober
71 Millers Gap Road
Enola, Pa. 17025

(717) 790-0708

ENCLOSURE 8

PAGE 1 OF 1 30/67

June 12, 1995

Dear Jim:

As I indicated to you on the telephone, I want to send this letter along to express my sincere thank you for sending the items of memorabilia from the State Police to me.

I feel as if a great honor, and responsibility, has been given to me. Both of which I gladly accept. The honor I feel is from your faith in me by entrusting me with the precious items from our past. The responsibility is keeping alive, and preserving, the proud tradition and heritage of our past. I feel that you have passed on to me items which are not for me to possess, but to appreciate and preserve for future generations. It that sense, I see myself as a caretaker and will be diligent in my efforts. I hope this meets with your approval.

Your letter mentioned that you would answer any questions that I have. I have been so overwhelmed by your generosity that I have not realized any questions, but am sure that I will. You also mentioned your scrapbooks. Yes, they too would be very interesting for me to read. I devour anything related to the State Police. However, I do not want to impose on you anymore than I already have.

As I also have indicated to you, you would be an honored guest, and are welcome, in our home anytime. We would enjoy having you. Should I be able to assist you in any way, please do not hesitate to contact me. Take care of yourself and stay in touch.

Your friend,



Darrell Ober
71 Millers Gap Road
Enola, Pa. 17025

(717) 790-0708

ENCLOSURE 9
PAGE 1 OF 1
3/16/

5/18/95

DEAR MR. BROOKS,

I WANTED TO SEND A FOLLOW-UP NOTE TO SEE HOW YOU ARE DOING, & TO THANK YOU ONCE AGAIN FOR SENDING THE BOX OF "GOODIES" TO ME. MY WIFE & I REALLY ENJOY LOOKING AT THE THINGS YOU SENT.

I trust the fruit basket ARRIVED O.K. I COULD NOT think of ANYTHING ELSE to DO AT the moment to EXPRESS my gratitude to YOU. TAKE CARE OF YOURSELF & THANK YOU AGAIN.

David Allen

ENCLOSURE 10
PAGE 1 OF 1

32/67

~~Capt. Fin~~ DARRELL G ORFER
 171 Miller Gap Road.
 ENOLA, PENN'A, 17025

5/21/1995

Dear Captain:

Thank you for your letter of 18 May,
 yes I did receive a beautiful Basket
 of Fruit. ~~and~~ I Enjoyed it very much,
 I am Glad you enjoy the Articles
 I sent, I will be sending you
 another Box, ^{of} articles, ~~I have~~,
 I got my Trunk Out of storage,
 and ~~am~~ sure I'll find ~~some~~ more
 things of interest, to send you.

James Brooks
 408 Ridgewood Drive
 Rome, NY 13500

ENCLOSURE 11

33/67

Switchboard.Find a Person - Result

Switchboard

- Find a Person
- Find a Business
- Search the Web
- Find Email
- Maps & Directions

Here are some Cool Sites you have to check out! Click below

click me! **Forbes** **Expedia** **SCRATCH & WIN** **FurnitureFind**

Join now

Can't Find The

Last Name First Name

Show Me How!!

Switchboard.Find a Person

Displaying: 91-96

[Missing Persons](#) | [Modify Search](#) | [New Search](#)**HELP?**

Switchboard's Giftshop
Send a friend a gift below:

CLASSMATES
Find your old friends on the Net. Click here.

The TOP
Message Boards

Women **NEW!**
Music **NEW!**
Y2K **NEW!**
Hobbies
Collecting
Entertainment **NEW!**
Horoscope **NEW!**
Seniors **NEW!**
Humor
Relationships
Kennedy Tragedy
Genealogy
General Stuff
Teens
Paranormal
Religion
Star Wars
Gun Forum
Animals
Health, Medical
President Clinton
Civil Rights
Home Business
Computers
Parenting
Natural Disasters
School Issues
Election 2000
Kosovo
Missing Persons
Suggestions

Hayman, William L
544 Creekside Ln,
Mount Joy, PA 17552-1602

(717)653-6005

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)

Hayman, Wilson B
250 Park Ave,
Washington, PA 15301-5764

(724)229-0993

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)

Hayman, W J
284 E Branch Rd,
Mercer, PA 16137-3308

(724)946-3375

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)

Hayman, Zendrie
1500 Locust St,
Philadelphia, PA 19102-4329

(215)545-9146

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)

Hayman-El, Lois
1647 N 62nd St,
Philadelphia, PA 19151-3925

(215)878-1835

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)

Hayman-Purnell, D
7137 Chew Ave,
Philadelphia, PA 19119-1817

(215)247-6984

5¢ Long Distance
Email, Maps, and What's
Nearby SM

[Update](#)**Can't find them?**

Try These alternatives:

1. [Modify Search](#)
2. [New Search](#)
3. [Missing Persons Message Board in PA](#)
4. [Search Public Records](#)
5. [Find Your Old Classmates](#)

ENCLOSURE 12
PAGE 1 OF 1



Search Tip: Too many listings? [Click here](#) for help on narrowing your search. No results? [Click here](#) for help on broadening your search.

Want to add your email address to your listing? Moved recently? Need to update your information? Click [Update](#) next to your listing and personalize today!

June 28, 1995

Dear Mrs. Hayman:

Thank you for taking the time to speak with me this past Sunday about your husband, the State Police and your remembrances of both. As I indicated to you, I have been afforded many wonderful opportunities to get to know a number of our retirees and their families. I have made some very good friends. Most of them have also been very helpful. I do, however, regret not getting the chance to meet and get to know Willis. It certainly sounds as if he had a great career and treasured his time with the State Police. I look back with fond memories of the time that I spent in Troop D and when I lived in Mercer.

I also want to thank you for considering me for the State Police items that you may consider parting with. Collecting State Police items has certainly given me new perspective and appreciation for our Department. I assure you that I have great respect for the State Police and the items I collect are appropriately displayed, cared for and appreciated.

Good luck to you on your planned trip. I look forward to hearing from you and hopefully, meeting you soon. Should I be able to assist you in any matters of mutual concern, please do not hesitate to contact me.

Sincerely,



Darrell Ober
71 Millers Gap Road
Enola, Pa. 17025

(717) 790-0708

35

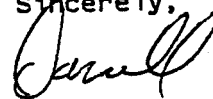
September 21, 1995

Dear Mrs. Hayman:

Thank you very much for sharing your recollections of your husband and the State Police with me. Especially, thank you for giving me the rodeo books and State Police book. They are interesting, informative and will be of great assistance to me as I try to keep the story alive.

If I can be of any assistance to you, please do hesitate to contact me.

Sincerely,



Darrell Ober

ENCLOSURE 14
PAGE 1 OF 1 36/62

Philip M. Conti
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

March 15, 1999

Mrs. Willis J. Hayman
284 E. Branch Road
Mercer, Pennsylvania 16137

Dear Marian:

I received your letter last week and the photographs you enclosed. I am sending you an official acknowledgment for those items and some others Bill sent to me some time ago. They will be retained for the our museum.

I regret very much the visit made to your home by Captain Darrell Ober, after Bill's death in 1995. Captain Ober is a private collector, and is not a representative of our Pennsylvania State Police museum project. Therefore, those items you surrendered to him, obviously at his pleading, will not be a part of our collection. If anyone should come to your home soliciting artifacts, please get in touch with me right away; but, give him nothing.

We are still interested in any of Bill's belongings that you may still have for our museum. If you still have his violin, which he used in his rodeo performances, and the broken Indian Boy statue, we would very much like to have them. I wanted so much to have some of Bill's carved figures for our museum. Bill was quite a figure in our history, and I would personally wish to have some display in his memory. Whatever you can give us for the museum, will be picked up by a trooper from the Mercer Barracks.

I would still like to have the names and addresses of your children, so we can keep in touch with them. I tried to get your phone number for our artifacts records, but was told by the operator that your phone number is unlisted. Please send me your phone number, as it will come in handy in trying to contact you.

I pray this letter finds everything going well with you.

Respectfully,

Philip M. Conti
Lt. Colonel PSP (Ret.)

ENCLOSURE

PAGE

1 OF 1

37/67

**PENNSYLVANIA STATE POLICE
PICTORIAL CENTENNIAL HISTORY BOOK PROJECT**

General Information

The Book Project functions under the Pennsylvania State Police Centennial Committee (Special Order 98-23) as a subcommittee.

Project was authorized on August 6, 1996 by the Commissioner

The Project's mission is to research, organize, and publish a pictorial history of the Department to coincide with the Department's 100th Anniversary in 2005. The purpose is to provide a historically accurate, museum quality publication that will reflect a positive image of the Department both to the public and the entire nation. Since our Department will be the first uniformed State Police organization of it's kind to reach this milestone, it should be our honor and responsibility to share our proud heritage with others by providing them with a documented, visual record.

Project Members:

Marc J. Infantino, Chair

Richard O. Binker

Captain Darrell Ober

Trooper Bob Clark

Sgt Jim Murphy

Lt. Col Phil Conti, retired

Charlotte Walters



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

COLONEL PAUL J. EVANKO
COMMISSIONER

August 6, 1996

Mr. Marc J. Infantino
Pennsylvania State Police
Bureau of Staff Services
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Dear Mr. Infantino:

Thank you for the suggestion you submitted to publish a pictorial history of the Department in conjunction with our 95th or 100th anniversary. Your suggestion was identified as Suggestion Number 95-54.

I am pleased to advise you that your suggestion has considerable merit and will be adopted. Organizing and publishing a pictorial history of the Department is a monumental task. I believe we should plan this history to coincide with our 100th anniversary, leaving sufficient time to create an excellent product.

Implementation of your suggestion will require a committee to organize a direction for this project. I would like you to chair that committee. Committee members may be culled from several valuable sources within the Department, e.g., the Public Information Office; Bureau of Laboratory and Communications Services, Photographic Section; Bureau of Staff Services; and the Bureau of Training and Education. Currently, the Director, Bureau of Training and Education is spearheading a project to develop a museum to display the Department's rich history. Additionally, Lt. Col. Philip M. Conti (retired), who contributes retiree information for The Communicator and has published literature on our Department, may be willing to cooperate in the development of this project.

The Bureau of Research and Development will forward a copy of this correspondence with a letter to the aforementioned parties requesting their assistance.

ENCLOSURE 16

PAGE 2 OF 9 39/67

Mr. Marc J. Infantino
August 6, 1996
Page 2

I would like to commend you for taking the initiative to submit this suggestion which will greatly display the Department's proud tradition. I hope you will continue to submit other suggestions which may be beneficial to the Department.

Sincerely,

Col. Paul J. Evanko

Colonel Paul J. Evanko
Commissioner

ENCLOSURE 16
PAGE 3 OF 9
40/7

3 (12-89)

98-23

Special Order
March 5, 1998PENNSYLVANIA STATE POLICE
DEPARTMENT DIRECTIVE

SUBJECT: Pennsylvania State Police Centennial Committee

TO: Area, Troop and Station Commanders, and Bureau Directors

FROM: Commissioner

1. In order to ensure continuity in planning and management of issues regarding Department anniversary events and projects, a permanent anniversary committee is established.

2. The committee shall consist of three members assigned coincidental with their position, and two appointed by name by the Commissioner. The committee members are:

- a. Director, Bureau of Research and Development.
- b. Director, Bureau of Staff Services.
- c. Director, Bureau of Training and Education.
- d. Mary M. Bungo, Bureau of Emergency and Special Operations.
- e. Marc J. Infantino, Bureau of Staff Services.

3. The Director, Bureau of Training and Education, shall chair the committee. All subcommittees established by the committee for any purpose shall be chaired by one of the anniversary committee members. Executive direction regarding the committee shall be obtained from the Commissioner or the most appropriate Deputy Commissioner, according to applicable circumstances.

4. Questions concerning the contents of this special order shall be directed to the office of the Deputy Commissioner of Staff, at (717) 783-5567.

Paul J. Evanko
Colonel PSP

Distribution "B"

ENCLOSURE 16
PAGE 4 OF 9

PENNSYLVANIA STATE POLICE
PICTORIAL CENTENNIAL HISTORY BOOK PROJECT.

I. PHOTOGRAPHIC/RESEARCH AREAS:

A) Vehicles/Motorcycles/Specialized Vehicles (*Rick Binker*)

- including horse trailers, communications vehicles, scuba vans, etc.
- all vehicle related items: decals, lightbars, radar units, first aid kits etc.

B) Uniforms, Insignia, Accessories (*Marc J. Infantino*)

- Photos of all related uniform items

C) Early PSP Activities (*Darrell Ober*)

- Early State Police Activities

D) Unique Items (*Rick Binker*)

- Examples of Unique items include: first Teletype, PSP radio stations, first radios, radar units, etc.

E) Significant Events (*Darrell Ober*)

- Floods/Commonwealth Disasters, Strikes, Prison Riots (Camp Hill), Man Made Disasters (Three mile island, Airplane crashes)

F) PSP Buildings (*Darrell Ober*)

- Headquarters locations, Training Schools, First Troop Headquarters, including SHP

G) Aviation (*Darrell Ober*),

- Aviation (Fixed / Rotary)

H) Special PSP Units (*Marc J. Infantino*)

- SERT, Naval Units, Canine

I) Scuba (*Rick Binker*)

- PSP Scuba Teams

J) Rodeo Events / Mounted (*Bob Clark*)

- Rodeo Photos, PSP Mounted

K) General/Misc. Enlisted Activities, Civilian Activities, (*Marc J. Infantino*) -

- Civilian, Lab, PSP Action Photos not related to significant events, Etc.

L) State Highway Patrol Activities (*Marc J. Infantino*)

II. PRIVATE COLLECTIONS/ARTIFACTS (*Darrell Ober*)

- Coordinate with private collectors photographing specific items in their collections
- Coordinate museum items to get photographed

III. RESEARCH TOPICS (*all members*)

A. Manpower/Cadet Training throughout PSP history

- short history of the development of the Training Schools - Academy
- training schools/academy classes - # started, # graduated, date of graduation
- changes in curriculum over the years
- list of complement increases

B. Photos of all Commissioners/Superintendents, Acting Commissioners, Deputies

C. Photos/Biographies of Officers Killed in Line of Duty

D. List of Medal of Honor, Commendation Medals, Distinguished Service Medal recipients.

E. Organizational structure and changes throughout the history of the Department (including Introduction of Bureaus and new Troop Headquarters)

F. Short Historical Narrative of the Department

G. Short interesting stories of the PSP

H. Photos of hand guns, long guns, and automatic weapons used by PSP. (*Jim Murphy*)

ENCLOSURE 16
 6 OF 9

PSP Centennial Pictorial History Book

Proposed Layout

Description

- > 350 pages
- Limited Edition
- Onion Sheet possibly signed by Commissioners
- Dust Cover
- Museum Quality
- Inside front and back cover will have color photos of Patches, Decals, etc.
- Color, Black & White Enhancement, Cut Outs (all captioned)

Proposed Layout

- I. Brief Historical Narrative by Period (interspersed with photos)
- II. Significant events and activities presented in a comprehensive outline form (interspersed with photos)
- III. Vehicles
 1. Marked Patrol Vehicles:
 - a. Include all marked vehicles. Specifically include all color schemes and decal schemes. Include both front, back and side of each vehicle with as many full color photos as available.
 - b. Include all models of each marked patrol vehicle as space in the book allows.
 - c. Intersperse artifact photos of light bars, decals, first

aid kits with photos

2. Motorcycles:

a. Organize by Department or time frame

3. Specialized Marked Vehicles

IV. Uniforms

1. Badges and Shoulder Patches

a. Page dedicated to all Department Badges (in color)

b. Page dedicated to all Department Shoulder Patches (in color)

2. PSP Medals, Awards, Insignia

a. Page dedicated to show all medals, ribbons, marksman badges, and insignia (in color)

3. Uniforms by Period

a. Artifacts intermixed with period photos

b. Dress Uniforms/Undress/Headgear

V. Buildings

1. Photos of Training Sites

2. Original and Current Troop Headquarters

3. Photos of the various Department Headquarters

AA

VI. Aircraft

1. Helicopters

- a. Color photos of each color/model scheme

2. Fixed

- a. Photos of fixed wings

VII. Specialized Units

1. Include Mounted, Canine, SERT, Scuba, Academy, Naval, LCE, Civilian, etc.

- a. Page or Two for each specialized unit with a brief paragraph background

VIII. Photo Essay on the "Original Keystone Cops"

IX. Appendixes

1. Photos of Commissioners with their years of service
2. Photos and brief background of Officers Killed in the Line of Duty
3. List of PSP Medal of Honor & Commendation Winners
4. Complement Increases
5. List of Cadet Graduating Classes (Dates, Numbers)
6. Charts of Organizational Changes

15

STD-501X (9-86)

Commonwealth of Pennsylvania

Date: September 1, 1999

Subject: Supervisor Inquiry – IAD – 1999-409 Supplemental Report

To: Lieutenant John R. Brown
Acting Director, Internal Affairs Division

From: Corporal Robert D. Mrgich ^{RAM}
Internal Affairs Division, Central Section

Enclosures:

- (17) Correspondence to Corporal MRGICH from Mr. CONTI dated August 23, 1999.
- (18) Correspondence to Corporal MRGICH from Mr. CONTI dated August 29, 1999.
- 6. On August 25, 1999, this officer received Enclosure #17 from Mr. CONTI.
- 7. On August 31, 1999, this officer received Enclosure #18 from Mr. CONTI.

47/67

Philip M. Conti
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

August 23, 1999

Corporal Robert D. Mrgich
Bureau of Professional Responsibility
Pennsylvania State Police
7820 Allentown Boulevard
Harrisburg, Pennsylvania. 17112

Dear Corporal Mrgich:

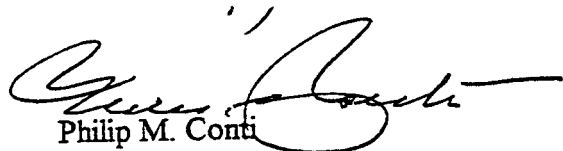
Your attention is invited to the copies of letters I've recently received from Lee J. Poso and Marian Hayman, both of whom are known to you.

It is quite evident that both of these elderly women are upset over having had anything to do with Capt. Ober. In all my correspondence with these women, it is strongly evident that Ober identified himself as a PSP captain. He showed them his business card, which in my estimation is tantamount to showing them his badge.

Mrs. Poso's letter reeks with Ober's obvious attempts to con her. Note his story about the book ends. These book ends, by the way, are brass or bronze. The book ends were recently donated to the PSP museum by Mrs. Poso.

I don't have the slightest idea if your investigation is completed and, if so, what your conclusions are. I do know that from what information I've gotten from these two elderly women, Ober, at the very least, has not conducted himself well as an officer of our Department. And, I have no intention of letting this matter drop.

Sincerely,


Philip M. Conti
Lt. Colonel PSP (Ret.)

ENCLOSURE

PAGE 1 OF 5

17

5

48/67

18 Aug 1999

Dear Phil

Thank you for your ^{the} of 10 Aug 99. Time just runs away from me

Did I mention that Jim's wife niece wanted some of furniture and pictures of his wife's family. I sent her several packages of Esther (Jim's wife's). The house is full of treasures here. I guess she wanted about everything that belonged to her. I asked her if she would like to have something out of the house. I meant just an item or two. She said I would like, this table, lamp, small table, and she had paid for a chair she had given ^{Jim} (small-corned chair). Knowing Jim he never accepted anything unless he paid for it. My nephew said to me tell her to bring a truck. Her house is full of antiques.

I had another nice surprise - I found a book with title of Pennsylvania State Police - thinking this would nice for the museum. It was in Jim's bedroom. So I thought I send that. Later as it lay on the

ENCLOSURE

17

49/67

table - I noticed you had written it
I would ^{very} like to read it. Later if you would like
it for museum - I'll send it to you.

Corporal Robert D. Wrigich, contacted me several
times. He was very pleasant, he asked me
many questions. How did Capt Ober ~~defend~~ ^{represent}
himself by rank or by Mr. Corp. Wrigich
asked me - did Jim know about the
museum - not until he ~~received~~ ^{received} his
packages. After Jim sent the packages, later
he found out about the museum. Jim was
very disappointed, said little - but
stated his belongs should have gone
to museum. He called ^{me} after Jim
passing - he wanted pictures of Jim.
I sent him 8x10 or larger, and he ^{also} wanted
anything concerning Hershey Strike. I paid
\$6.00 ^{quickly} to have Jim's pictures copied. He later
told me that he was having his office
remodeled, and he was going to put one of
large pictures of Jim in his office. He sent
me ^{sympathy} card, and ~~he~~ ^{we} have heard from him since.
I sent him newspaper of the strike. I get
upset when I think of this situation.
He was attending a meeting in Albany, NY
and inquired how far was Rome, from
Albany.

II

Camp Mergich wrote report and sent it to his superior. He said he probably couldn't do anything - but sent the report. Camp Mergich wanted the letters that Capt Ober had sent. Camp Mergich also sent me a large stamped envelope to put any correspondence that he sent Jim. He had all this tucked away in dresser. I believe he ^{was} eager to get letters that Capt Ober sent, because I had waited a couple of days before sending them - so he called me - I told them I had ^{just} mailed them.

Capt Ober called ^{me} at one time, he had received a set of bookends, he said one was broken. I doubt very much if it was. So I told him to send me the that pair and I would send him a good pair. I mentioned I didn't want Jim's things cast aside. I never ^{heard} anymore about the book ends. (My question is were they broken or were they ^{not} broken)

I have a picture when he was on the football team? Would this be interest?

May God Bless You. Phone here is 315-337-440
1905
I took Jim's phone. The
members has many memories
of when he used to call me.

ENCLOSURE

17

4 of 5

57/2

Philip M. Conti
1081 Acri Drive
Harrisburg, Pennsylvania 17111
717-564-8088

August 29, 1999

Corporal Robert D. Mrgich
Pennsylvania State Police
7820 Allentown Boulevard
Harrisburg, Pennsylvania 17112


Dear Corporal:

This past week I received a phone call from Mrs. Lee J. Poso. She informed me that she was going to phone you (perhaps she has already done so) and urgently request your help in having Captain Ober turn over to the Academy for the PSP museum all of Jim Brooks' PSP artifacts. She is still very much upset, as was Jim Brooks, that a footlocker full of artifacts were given to Captain Ober, with the understanding at that time that all items would be given to the Pennsylvania State Police. I am certain your investigation of this matter has confirmed the underhanded method used by Captain Ober in securing the artifacts.

I told Mrs. Poso that I agreed with her determination that all items go to the Department for the museum, and that I would write to you. In recent weeks, Mrs. Poso has sent us a number of Jim's artifacts for the museum, which are now stored at the Academy.

I urge you to do whatever you can to pursue this matter of restitution. I do not think it is fitting for Captain Ober to retain his ill-gotten gains. He should not only turn over to the Academy all items he secured from Jim Brooks, but also all items he secured from Mrs. Willis J. Hayman.

Sincerely,


Philip M. Conti
Lt. Colonel PSP (Ret.)

ENCLOSURE 18
PAGE 1 OF 1

53/67

104 (8-93)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
ADMINISTRATIVE WARNINGMember/Employee Captain Darrell G. OBERInterviewer Corporal Robert D. MRGICHPR Control No. 1999-409Date September 10, 1999

This questioning concerns administrative matters relating to the official business of the Pennsylvania State Police. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Pennsylvania State Police, you are required to answer questions truthfully and completely or you may be subjected to administrative action. You do have the right to have a union representative with you during such questioning. If during the course of the interview, you have reason to believe that your statements could result in administrative action being initiated against you, union representation will be provided upon request.

Do you understand what I have just explained to you? ☒ YES ☐ NO

Do you have any questions concerning what I have just explained to you? ☐ YES ☒ NO

Captain Darrell G. Ober

9/10/99

DATE

SIGNATURE OF EMPLOYEE/MEMBER

Col. Robert D. Mrgich

5696

09/10/99

DATE

SIGNATURE OF INTERVIEWER

ENCLOSURE 19PAGE 1 OF 1

54/67

(8-93)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
NOTIFICATION OF INQUIRY

NOTE: INVESTIGATORS SHALL PREPARE ORIGINAL AND ONE COPY, RETAIN THE ORIGINAL WITH CASE FILE AND PROVIDE COPY TO THE SUBJECT OF INVESTIGATION. ONE OF THE THREE LISTED INVESTIGATION TYPES SHALL BE CHECKED.

BPR.

1999-409

Captain
RANKDarrell G. OBER
NAMEBureau of Tech. Services
TROOP/STATION

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- ☒ A COMPLAINT INVESTIGATION IS BEING CONDUCTED INTO AN INCIDENT IN WHICH YOU ARE ALLEGED TO HAVE BEEN INVOLVED. THE DETAILS OF THE COMPLAINT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ A NON-COMPLAINT INVESTIGATION IS BEING CONDUCTED IN ACCORDANCE WITH DEPARTMENT DIRECTIVES. THE DETAILS OF YOUR INVOLVEMENT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ AN ADMINISTRATIVE INVESTIGATION IS BEING CONDUCTED PURSUANT TO A REQUEST FROM THE OFFICE OF CHIEF COUNSEL. YOUR INVOLVEMENT HAS BEEN IDENTIFIED AS FOLLOWS:

complaint was received that you obtained PSP items from a Mr. BROOKS and Mrs. HAYMAN under the pretense that the items were to go to the PSP Museum, but you kept the items for your personal collection. The questions pertain to the above incidents.

ENCLOSURE 20
PAGE 1 OF 1Cp. Robert D. Mugh 5696
SIGNATURE OF INVESTIGATOR

I ACKNOWLEDGE RECEIPT OF THIS NOTIFICATION AND I AM AWARE OF MY RIGHT TO UNION REPRESENTATION.

SIGNATURE

BADGE/I.D. NO. 150

SOCIAL SECURITY NO. 204-42-0484

DATE 9/10/99

TIME 0815

55/67

One Maxell C90 Cassette Tape of Interview with Captain Darrell G.
OBER by Corporal Robert D. MRGICH on September 10, 9999

Attached to Original Report

ENCLOSURE 21
PAGE 1 OF 1

56/127

This is Corporal Robert MRGICH from the Internal Affairs Division, Central Section. Today is September 10th, 1999. The time is 0812 hours. I am interviewing Captain Darrell G. OBER of the Bureau of Technology Services. The interview is being conducted in the Bureau of Technology Services building, conference room number one, located at 2629 Market Place, Harrisburg, PA 17110. The interview is regarding investigation 1999-409.

MRGICH: Captain OBER, at this time I'd like to read you your Administrative Warnings:

"This questioning concerns administrative matters relating to the official business of the Pennsylvania State Police. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Pennsylvania State Police, you are required to answer questions truthfully and completely or you may be subjected to administrative action. You do have the right to have a union representative with you during such questioning. If during the course of the interview, you have reason to believe that your statements could result in administrative action being initiated against you, union representation will be provided upon request.

Do you understand what I have just explained to you?"

OBER: Yes.

MRGICH: Do you have any questions?

OBER: No. Well yes, I do. Is this being conducted as a IA investigation or a Supervisory Inquiry?

MRGICH: Supervisory Inquiry.

OBER: Okay.

MRGICH: I need you to sign the top line for me, please. That is your copy there.

Captain OBER, now I'd like to read your Notification of Inquiry:

"A complaint investigation is being conducted into an incident in which you are alleged to have been involved. The details of the complaint are as follows:

ENCLOSURE 22

PAGE 1 OF 11

57/17

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 2

A complaint was received that you obtained PSP items from a Mr. BROOKS and Mrs. HAYMAN, under the pretense that the items were to go to the PSP museum, but you kept the items for your personal collection."

The questions pertain to the above incidents. What I need you to do now Captain, is to sign the bottom line for me please. That is your copy there.

Captain OBER, are you aware the interview is being tape-recorded?

OBER: Yes. Before we begin, I have a – when it's appropriate, I have a question.

MRGICH: Okay. Captain OBER, you also have union representation with you today.

OBER: Yes.

MRGICH: Could you state your full name for me, please?

RUDA: Corporal Michael RUDA.

MRGICH: Captain, your question?

OBER: Just for clarity, are you saying that the two individuals that you mentioned, have they filed complaints with the Department?

MRGICH: No, they have not.

OBER: Who is the complainant?

MRGICH: The complainant is Mr. Philip CONTI, retired Lieutenant Colonel. Captain OBER, what was your duty assignment in June and September of 1995?

OBER: Let me think about this for a second. Uh, I was the Director of Systems and Process Review Division.

MRGICH: When were you assigned to that position?

OBER: I was assigned to SPR in uh, I think it was March 3rd of 95.

MRGICH: And when – until when?

OBER: Until May 2nd of 98.

MRGICH: And you are currently, your position now?

ENCLOSURE 22
PAGE 2 OF 11
58/67

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 3

OBER: I'm currently Systems Integrator Procurement Team Leader for Tech Services.

MRGICH: And you were assigned that when?

OBER: I was assigned here on April 26th of 99.

MRGICH: Referring to the incident to the complaint in question with Mr. BROOKS and Mrs. HAYMAN, how did you get their name as far as contacting them?

OBER: I believe I was uh, I believe the contact with Mrs. HAYMAN – actually I think I, from being stationed in Mercer, I believe I spoke to uh, Mr. HAYMAN at the barracks a time or two. I was stationed in Mercer from 81 until 85. There were a couple of the retirees that used to come out to the barracks and I believe he was one of them. Uh, but I think the manner of introduction to Mrs. HAYMAN was through Willard SCHAUER, who's also a retiree, and I believe he lives out near Pittsburgh somewhere.

MRGICH: How do you spell his last name, do you know?

OBER: I think its spelled S-C-H-A-U-E-R, Willard SCHAUER. I believe that's correct.

MRGICH: Is that how you got Mrs. HAYMAN's telephone number?

OBER: Yes.

MRGICH: How about Mr. BROOKS?

OBER: You know, I can't recall for sure because I uh, I've spoken to Mr. BROOKS a number of times over the years. I really don't recall how – what led me to Mr. BROOKS. I don't remember. I do remember probably about five years ago or so, he had asked me if I could possibly drive him to the retirees' convention. I think it was in Hershey that year, but he was ill and ended up, he couldn't make it.

MRGICH: So prior to receiving the items from both the individuals, you had contact or known them previously?

OBER: Uh-huh.

MRGICH: Just to clarify this, Mrs. HAYMAN mentioned in the letter – I know you stated this, but Mrs. HAYMAN mentioned that you told that you had known her, her husband, prior to corresponding with her. That would've been through the station while you were stationed there from 81 to 85?

OBER: Yes, uh-huh.

ENCLOSURE 22

PAGE 3 OF 11

591

54

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 4

MARGICH: What items did you receive from Mr. BROOKS?

OBER: From Mr. BROOKS, uh, he sent me a – let me think about this – an old uniform shirt, a book on care of horses, and I think some photographs. You know, I have to really think about this or look – that's what I recall. I remember that there was a box with clothes – oh, it was a pair of puttees and the leggings, a pair of leggings.

MARGICH: When did you receive those items from Mr. BROOKS?

OBER: Well I'm not real sure of that. That's probably four or five, maybe six years ago. He been – he's passed away a couple years ago. I don't really remember.

MARGICH: If I show you a letter that you wrote to Mr. BROOKS – if I show a letter, can you tell me whether or not you are the author of that letter?

OBER: I believe I could.

MARGICH: I'm showing you Enclosure (9), page 1 of 1, dated June 12th, 1995.

OBER: Yes, I'm sure – I wrote that.

MARGICH: So that would've been when you received the items?

OBER: Uh-huh.

MARGICH: At that time were you a member of the PSP Museum Committee?

OBER: No.

MARGICH: How did you receive the items from Mr. BROOKS?

OBER: He mailed them to me.

MARGICH: Who paid for the shipping?

OBER: I believe he did. I don't recall paying them.

MARGICH: Did he ever ask you to pay for the shipping?

OBER: No.

MARGICH: Did you ever offer?

ENCLOSURE 22
PAGE 4 OF 11
6/67

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 5

OBER: I offered – well, I don't remember if I offered to pay for the shipping, but I offered to pay him for anything that he had and I believe I sent him a fruit basket, as I recall. That's a long time ago.

MRGICH: I believe if you look at Enclosure – there's a letter in here referencing – I believe it's that one right there, Enclosure (10), referencing the fruit basket. Is that correct?

OBER: Oh, yeah, okay. I did send it to him. I trust the fruit basket arrived. Yeah, he wouldn't accept any money and I didn't know – in fact, I, now that I think about this, I believe I spoke to his caretaker and asked her what he could eat or what would be appropriate, and uh, I sent him a fruit basket.

MRGICH: Did you ever promise Mr. BROOKS that the items that you received from him would end up in the museum?

OBER: Absolutely not. It was never discussed.

MRGICH: I believe if you refer to Enclosure (8), a letter that you wrote to Mr. BROOKS, dated March 31st, 1995 – could you tell me if you are the author of that letter?

OBER: Yes, this is my letter.

MRGICH: Am I correct in reading the line, third paragraph, halfway down, it says, "*As I said to you, I would be honored to add your things to my collection and will guarantee you they will be proudly displayed and cared for. . .*"

OBER: Yes.

MRGICH: . . . *I will be more than happy to pay you for these things but you say that is out the question.*"

OBER: Yes, that's correct.

MRGICH: So at no time did you reference the museum?

OBER: No, absolutely not.

MRGICH: Ms. POSO, who would be Mr. BROOKS' caretaker. . .

OBER: Yes.

MRGICH: . . . mentioned that you had sent her a business card.

ENCLOSURE 22
PAGE 5 OF 11

6/16/02

Interview/Captain Darrell G. OBER re: IAD-1999-409
Page 6

OBER: Correct.

MRGICH: And that was included in one of your correspondences to her.

OBER: I'm sure that I did.

MRGICH: What was the reason for that?

OBER: Just so they had some way of verifying who I am, what I do, what my profession is.

MRGICH: Do you feel you misrepresented yourself to Mr. BROOKS?

OBER: Absolutely not.

MRGICH: When was the last time you spoke with Ms. POSO?

OBER: Oh, I can only take a swack at that, it was probably a year ago. I'm not real sure.

MRGICH: Have you donated any of the items that you obtained from Mr. BROOKS to the museum?

OBER: No.

MRGICH: Okay, now lets talk about Mrs. HAYMAN. What items did you receive from her?

OBER: As I recall, one book is called, Our State Police, but it's not about Pennsylvania. It was, Our State Police book and a rodeo book, and again, maybe – well I don't believe I got any photographs. That's all I can recall off the top of my head.

MRGICH: When did you get the items from Mrs. HAYMAN?

OBER: Probably four or five years ago.

MRGICH: If you refer to Enclosure number (13), dated June 28th, 1995, are you the author of that correspondence?

OBER: Yes.

MRGICH: Can you explain to me what that letter says, just a quick synopsis?

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 7

OBER: Uh, a quick synopsis is this would've most likely been correspondence to follow-up a conversation that we had on the telephone.

MRGICH: Where you were interested in items that she had?

OBER: Yes.

MRGICH: And if you look at Enclosure number (14), dated September 21st, 1995, were you the author of that correspondence?

OBER: Yes.

MRGICH: That letter, if I'm not mistaken, if I'm reading it properly, you were thanking her for the recollections of talking with her about her husband and the State Police, and thanking her for the items that she gave you?

OBER: That's correct. That's even my typo on there, where it says, "*Please do hesitate to contact me.*" I didn't realize that was a mistake. Yes, that's correct.

MRGICH: When you received the items from Mrs. HAYMAN, how did you obtain those?

OBER: Uh, I visited her personally.

MRGICH: When you obtained those items, did you promise Mrs. HAYMAN that those items would end up in the museum?

OBER: Absolutely not, never discussed.

MRGICH: Again, Mrs. HAYMAN stated that you sent your business card, along with your correspondence. What was the reason for that?

OBER: The same as before - simple verification of identity.

MRGICH: Do you feel you misrepresented yourself to Mrs. HAYMAN?

OBER: Absolutely not.

MRGICH: Did you pay for the items?

OBER: She would not - I offered - she would not accept any payment.

MRGICH: When was the last time you spoke to Mrs. HAYMAN?

OBER: Uh, probably four years ago. I don't recall speaking to her afterward, after. . .

ENCLOSURE 22

PAGE 7 OF 11

Interview/Captain Darrell G. OBER re: IAD-1999-409
Page 8

MRGICH: Were you – I'm sorry – were you a member of the PSP Museum Committee at the time you received these items?

OBER: No.

MRGICH: Have you donated any of the items you received from Mrs. HAYMAN to the museum?

OBER: No.

MRGICH: Why would Ms. POSO and Mrs. HAYMAN say that you told them the items that they gave you would end up in a museum? Do you have any idea?

OBER: I don't have idea.

RUDA: Excuse me, okay, uh. . .

MRGICH: I'm going to stop the interview. It's 0929.

MRGICH: The interview is started again. It's 0929 again.

OBER: Again, I believe your question was, "Do I know why they might say that?"

MRGICH: Yes.

OBER: No, I have no idea why they would say that because I want to be very clear about this, at no time have I ever, in any way, shape, or form, ever represented to anyone that I am a member of the Pennsylvania State Police Museum Committee or using any leverage of any source in my association with this Department to add to my private collection. Now if these people are saying that now, it would appear to me, based on what I see and what I hear, well – I'm just – I'm not one who's going to make those assertions, but I can't answer why they would do that, other than the fact of the matter is I've never done that. I'm the Director of Internal Affairs Division. I've been involved in – assigned to BPR for six years. I certainly have more commonsense and more ethics and more integrity than to do something like this, and I have never done it.

MRGICH: Would you be willing to donate the items to the museum?

OBER: Not at this time.

MRGICH: When were you appointed to the Museum Committee?

ENCLOSURE 22

PAGE 8 OF 11

63

Interview/Captain Darrell G. OBER re: IAD-1999-409
Page 9

OBER: I'm not on the Museum Committee.

MRGICH: Let me change that. . .

OBER: Do you mean the Book Committee?

MRGICH: The -- let me check my attachments here. The Centennial Committee.

OBER: Well, see I'm not real sure how that hierarchy works -- I'm on the Book Committee, which I think is one of the -- that thing has been restructured a couple times so I'll tell you what I understand or how it's my understanding this works, that the Centennial Book Committee is a subcomponent of the Centennial Committee. I believe that's correct. Uh, I was asked to participate in that oh, two years ago or more, three years ago. I'm not real sure.

MRGICH: This is dated, I believe, August 6th, 1996. Would that sound about right?

OBER: That would sound about right, but I actually did some work before that committee was formed for Colonel WALP. Colonel WALP asked me to go over to State Records Center and uh, one of the trips I went was with Colonel EINSEL, then yes, then Colonel EINSEL, to kind of access what was there. And that was kind of like before this committee was formed. So yeah, I think 96 is probably right.

MRGICH: So you've never been on the Museum Committee?

OBER: No.

MRGICH: Have you acquired any items for your own personal use while being a member of the Centennial Committee?

OBER: Absolutely not.

MRGICH: Have you acquired any items for the Centennial Committee while being a member of the Centennial Committee?

OBER: No. Wait -- what was that question again?

MRGICH: While being a member of the Centennial Committee, have you acquired any items for the committee?

OBER: For the committee? No, still no.

MRGICH: When was the last time you acquired items for your personal collection?

uk

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 10

OBER: And that question would relate to what violation?

MRGICH: It goes into relevance as far as did you pay for the items, was it on your own time, the follow-up questions, and did you identify yourself as being a member of the committee?

RUDA: Why don't you just ask him those questions then? He can do anything he wants on his own time. So why don't you just ask him those questions?

OBER: Yeah, we kind of blew by that early on. The nature of the allegation, I understand what's being alleged, but the violation for that would be - what, what is the violation that I've alleged to have committed, do we know?

MRGICH: The violation that I'm aware of is misrepresenting yourself as a member of the committee, the Museum Committee. . .

OBER: Well I understand. . .

MRGICH: . . .while obtaining the things for your own personal.

OBER: Okay, I understand that that's the allegation, but violation of regulation are we talking about?

MRGICH: Umm, I'm not aware.

OBER: Okay.

MRGICH: Let me rephrase. Let me rephrase the question.

OBER: Okay.

MRGICH: The items that you received for your own personal use. . .

OBER: Uh-huh.

MRGICH: . . .do you offer to pay for those items?

OBER: Absolutely. Ninety-nine percent of the time, I have to.

MRGICH: Those items that you receive for your own personal use, is that obtained on State time or personal time?

OBER: Personal time. .

Interview/Captain Jarrell G. OBER re: IAD-1999-409
Page 11

MRGICH: Those items you receive for your own personal use, have you ever identified yourself as being a member of the Museum Committee?

OBER: No. Absolutely not.

MRGICH: Do you, Captain OBER, have anything to add?

OBER: I have a lot that I could say. I have a lot of things that I think about this whole Supervisory Inquiry, but those that are around me are going to know that I'm gonna rise to a level of professionalism that's not gonna allow me to be sucked into this whirlpool. I've never done any of these things that are being alleged. It's not even clear to me that there's a violation that exists, but I understand why someone would want to know or clarify this. So I'm just telling you that I've never in any way, shape, or form done any of these things. I could speculate as to why this is being done to me, but I'm not going there. I'm a professional, and I have integrity, and I have some dignity, and I'm not gonna allow this process to suck any of those things out of me. That's all I have to say.

MRGICH: Corporal RUDA, have any questions?

RUDA: No.

MRGICH: Okay, the interview is concluded. The time is 0835 hours.

PSP-501X

COMMONWEALTH OF PENNSYLVANIA

DATE: October 4, 1999

SUBJECT: Time and Attendance – Captain Darrell Ober
General Invoice – Captain Darrell Ober

TO: Deputy Commissioner of Administration *TKC*
Attn: Director, Bureau of Professional Responsibility

FROM: Colonel Paul J. Evanko *PJE*
Commissioner

- ENCLOSURES:
- (1) Correspondence from Captain Darrell G. Ober, Systems Integrator Procurement Team Leader, Bureau of Technology Services, to Director, Bureau of Professional Responsibility, dated July 16, 1999, regarding Time and Attendance.
 - (2) Correspondence from Major Hawthorne N. Conley, Director, Bureau of Professional Responsibility, to Captain Darrell G. Ober, dated July 1, 1999, regarding Time and Attendance, with Enclosures.
 - (3) General Invoice – Reimbursement for Captain Darrell Ober.
1. I have conducted a full and complete review of the circumstances surrounding Captain Ober's requests. Based on my review Captain Ober's requests are denied. Therefore, the amount of \$83.74 shall not be provided to Captain Ober. Additionally, the date of March 15, 1999, shall remain charged to annual leave.
 2. Please notify Captain Ober and provide him with a copy of this correspondence.

Copy #3

STD-501, 9-86

COMMONWEALTH OF PENNSYLVANIA

DATE: July 1, 1999

SUBJECT: Time & Attendance

TO: Captain Darrell G. Ober

FROM: Major Hawthorne N. Conley *HNC*
Director, Bureau of Professional Responsibility

ENCLOSURES: (1) Time and Attendance Record for pay period ending
June 25, 1999.

(2) Time and Attendance Record for pay period ending
March 19, 1999.

1. Upon your temporary detached duty status to the Bureau of Technology Services, Strategic Development Division on April 26, 1999, your 1999 Record of Absence Form as well as your STD-330, Request for Leave slips, were forwarded for retention by the timekeeper for that Division. Therefore, Enclosure (1) is being returned for processing through the appropriate timekeeper.

2. Enclosure (2), requesting a leave adjustment for March 15, 1999, **shall not** be processed pending resolution of ongoing administrative inquiry. Retention of Enclosure (2) will be maintained by the Bureau of Professional Responsibility.

3. If you have questions concerning this correspondence, you may contact the Director, Bureau of Professional Responsibility.

cc: Director, Bureau of Technology Services
BPR FILE

Conley

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

DATE: November 10, 1999

SUBJECT: Northwestern University Traffic Institute

TO: Deputy Commissioner of Administration
(Through channels)

FROM: Captain Darrell G. Ober
Systems Integrator Procurement Team Leader
Bureau of Technology Services

ENCLOSURE: (1) Correspondence re: Subject.

1. I am in receipt of your memo re: the subject training. It would appear my non-selection, in part, was based on timeliness of my request.
2. By way of explanation, I submitted my request for consideration on October 19, 1999. I have been unable to pinpoint the exact cause of delay so future occurrences may be avoided.
3. Please be assured such tardiness is uncharacteristic of my work ethic.

Concise



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA. 17110

OFFICE OF DEPUTY COMMISSIONER

MARCH 5, 1998

Darrell,

I justed wanted to share with you how much I appreciate the job you are doing. I have received many positive comments from Area & Troop Commanders on your outstanding performance.

The extra mile you go to cooperate & work with your fellow Commanders is duly noted. Needless to say, when they are happy, it makes the Commissioner & my job easier.

Keep up the Good work!

Tom

Copy #6.

21

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

DARRELL G. OBER, *

Plaintiff *

vs. *

Case No.

1:CV-01-0084

PAUL EVANKO, *

MARK CAMPBELL, *

THOMAS COURY, *

JOSEPH WESTCOTT, *

and HAWTHORNE *

CONLEY, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF
LIEUTENANT COLONEL THOMAS COURY

April 15, 2002

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

VIDEOTAPED DEPOSITION

OF

LIEUTENANT COLONEL THOMAS COURY,
taken on behalf of the Plaintiff
herein, pursuant to the Rules of
Civil Procedure, taken before me, the
undersigned, Vivian Gratz, a Court
Reporter and Commissioner of Deeds in
and for the Commonwealth of
Pennsylvania, at the Bureau of Tech
Service, 2629 Market Place,
Harrisburg, Pennsylvania, on Monday,
April 15, 2002, beginning at 10:06
a.m.

A P P E A R A N C E S

DON BAILEY, ESQUIRE

4311 North 6th Street

Harrisburg, PA 17110

COUNSEL FOR PLAINTIFF

BARBARA L. CHRISTIE, ESQUIRE

Chief Counsel

Assistant Counsel

Pennsylvania State Police

1800 Elmerton Avenue

Harrisburg, PA 17110

COUNSELS FOR DEFENDANTS,

PENNSYLVANIA STATE POLICE

A P P E A R A N C E S

(Continued)

ALSO PRESENT:

JOHN R. BROWN

Director of Internal Affairs for the

Pennsylvania State Police

Bureau of Professional Responsibility

7820 Allentown Boulevard

Harrisburg, PA 17701

ALBERT RODRIGUEZ, PR Video

I N D E X

WITNESS: LIEUTENANT COLONEL THOMAS

COURY

DISCUSSION AMONG PARTIES 8 - 11

EXAMINATION

by Attorney Bailey 11 - 247

EXAMINATION

By Attorney Christie 247 - 265

CERTIFICATE 267

EXHIBIT PAGE

	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u> <u>IDENTIFIED</u>
	1	5/22/99 Letter	22
	2	Packet	33
	3	Time and Attendance Sheet 10/4/99	--
	4	Time and Attendance Sheet 7/1/99	186
	5	Northwestern University Traffic Institute 11/10/99	187
	6	Handwritten Note	233
	7	E-mail 10/4/00	237

OBJECTION PAGEATTORNEYPAGE

Bailey	36, 250, 251, 252, 253,
	254, 254, 255, 256, 258,
	259, 260, 261, 262, 262,
	263, 264, 265
Christie	60, 77, 78, 170, 228

P R O C E E D I N G S

VIDEOGRAPHER:

Ladies and gentlemen,
please, be advised the video
operation is now on. It is
April 15th, 10:06 a.m., camera
time. Today's date, as I just
said, is April 15th. My name
is Albert Rodriguez. My
address is 4146 Spruce Park,
Lebanon, Pennsylvania 17046.
I have been hired by PR Video
to do this video deposition
for the Plaintiff.

This case is in the
United States Court for the
Middle District of
Pennsylvania. It is docketed
at 1:CV-01-0084. The caption
is: Darrell G. Ober versus
Paul Evanko, et al. The
Deponee is ---.

ATTORNEY BAILEY:

That's Lieutenant

1 Colonel Thomas Coury this
2 morning.

3 VIDEOGRAPHER:
4 Lieutenant General
5 Coury.

6 ATTORNEY BAILEY:
7 No, Lieutenant Colonel
8 Thomas Coury.

9 VIDEOGRAPHER:
10 Lieutenant General
11 Darrell - - - .

12 ATTORNEY BAILEY:
13 No. Lieutenant Colonel
14 Thomas Coury. He's not
15 general yet. He probably
16 wishes he was promoted, but
17 he's not there yet.

18 VIDEOGRAPHER:
19 Lieutenant General
20 Thomas Coury.

21 ATTORNEY BAILEY:
22 Lieutenant Colonel.

23 VIDEOGRAPHER:
24 Lieutenant Colonel - - -

25 ATTORNEY BAILEY:

1 Thomas Coury.

2 VIDEOGRAPHER:

3 --- Thomas Coury.

4 ATTORNEY BAILEY:

5 Correct.

6 VIDEOGRAPHER:

7 Lieutenant Colonel,
8 please, raise your right hand.

9 -----
10 LIEUTENANT COLONEL THOMAS COURY,
11 HAVING FIRST BEEN DULY SWORN,
12 TESTIFIED AS FOLLOWS:
13 -----

14 VIDEOGRAPHER:

15 Will Counsel, please,
16 identify themselves and
17 provide their address and
18 phone number for the record?

19 ATTORNEY BAILEY:

20 Yes. My name is Don
21 Bailey. I represent the
22 Plaintiff, Darrell G. Ober in
23 this case. My address is 4311
24 North Sixth Street,
25 Harrisburg, PA 17110. Phone

11

1 number is 717-221-9500. The
2 FAX is 9600.

3 ATTORNEY CHRISTIE:

4 Barbara Christie, Chief
5 Counsel, Pennsylvania State
6 Police. My office address is
7 1800 Elmerton Avenue,
8 Harrisburg, PA 17110. Office
9 number 717-73 --- strike that.
10 717-783-5568.

11 ATTORNEY REYNOLDS:

12 Joanna Reynolds. I'm
13 an Assistant Counsel with the
14 State Police. I represent the
15 Defendants in this matter and
16 my address as phone number are
17 the same as the Chief
18 Counsel's.

19 VIDEOGRAPHER:

20 Very well. You may
21 begin.

22 ATTORNEY BAILEY:

23 Thank you.

24 EXAMINATION

25 BY ATTORNEY BAILEY:

1 Q. Good morning, Colonel. How
2 are you?

3 A. Fine, Mr. Bailey. How are
4 you?

5 Q. Just fine. I want to go back
6 and try to get you out of here as
7 soon as possible. I'm sure Counsel
8 concur on that. It's beautiful
9 weather out there; isn't it. So I'm
10 going to try to pick up basically
11 where we left off and I'm going to
12 tell you what format I'm going to
13 follow, do the following things. I
14 have some questions for you about the
15 museum inquiry, ---

16 A. Restaurant.

17 Q. --- the issue concerning
18 Captain Ober and the museum issue and
19 your role in that and what you know
20 about that. I have some questions
21 having to do with the relationship
22 with discussions with the --- Colonel
23 Evanko pertaining to the
24 investigation, just a few
25 follow-up questions on that, the

1 investigation on Captain Ober. I
2 want to ask you some questions also
3 about the now Lieutenant Colonel
4 Conley and some of the things that
5 passed through you and Darrell over
6 there. And then lastly, I have a few
7 questions for you just on your
8 knowledge, given your years of
9 experience, on policy and practices
10 in the Pennsylvania State Police,
11 particularly as they pertain to
12 transfers.

13 So beginning at the beginning,
14 the museum investigation. There's no
15 need to go through that introductory
16 stuff; is there?

17 A. No, sir.

18 Q. And then the deposition is
19 continuing, so I won't waste your
20 time with anything else.

21 A. No, sir.

22 Q. Okay. Now, if I understand
23 it, sometime on or about May 22nd,
24 1999, you were the person that
25 directed a supervisory inquiry be

1 conducted on Captain Ober; is that
2 correct?

3 A. As I recall, yes, sir. I'm
4 not sure about the date, but, yes,
5 sir.

6 Q. Did you ever --- number one,
7 did you ever review the results?

8 A. Yes, sir.

9 Q. And who adjudicated that?
10 Now, it's a supervisory inquiry. Do
11 they adjudicate it the way a formal
12 IAD complaint is adjudicated?

13 A. I've been away from it so
14 long, I'm not sure if it's
15 adjudicated in the exact same way,
16 but there is an adjudication on it.

17 Q. Okay. Are there any kind of
18 limitations on who may do an
19 adjudication, under what
20 circumstances any particular person
21 may do an adjudication or can anyone
22 do it? Can your commanding officer
23 do it? Can somebody with an interest
24 in the matter do it; do you know?

25 A. It's typically done by someone

1 in the member's chain of command,
2 certainly higher than the member
3 adjudicated within that chain of
4 command. An adjudication can be done
5 by anyone at the direction of the
6 Commissioner. In other words, if the
7 person's direct commander might not
8 be able to be objective or may have
9 played a role in the investigation,
10 the adjudicator could end up being
11 someone else.

12 Q. But could you adjudicate it?

13 A. Could I adjudicate it, yes,
14 sir.

15 Q. You could. And did you in
16 this case?

17 A. I believe I did, sir.

18 Q. And what did you base the
19 adjudication on?

20 A. The contents of the
21 administrative inquiry report.

22 Q. Well, didn't you initiate the
23 inquiry?

24 A. Yes, sir.

25 Q. And what was the basis of your

1 initiating the inquiry?

2 A. As I recall, the museum had
3 people from the museum. And when I
4 say people from the museum, I more
5 specifically mean retired Major Matt
6 Hunt and retired Lieutenant Colonel
7 Philip Conti had mentioned to me on a
8 couple of occasions where they
9 thought there was a violation of
10 State Police rules and regulations
11 being committed by Captain Ober, in
12 that Captain Ober would use his badge
13 of office, if you will, to contact
14 recent widows of members in order to
15 obtain State Police memorabilia and
16 artifacts from them. That was
17 brought to my attention at least on
18 two occasions that I can recall
19 verbally by either Major Hunt or
20 Lieutenant Colonel Conley. And told
21 them that if they wanted to make or
22 felt it necessary to make a formal
23 complaint they should do that in
24 writing. And they submitted
25 correspondence to me.

1 Q. Okay. Well, you know, we all
2 know what the purpose of our whole
3 system of jurisprudence is. And, you
4 know, that's to avoid, you know,
5 accusing somebody of innuendo and
6 that sort of thing and proof, so let
7 ask you some questions having ---.

8 A. Sure.

9 Q. Having to do with proof in
10 this matter. First of all, you
11 indicate that Mr. Conley and did you
12 say Mr. Hunt?

13 A. Conti.

14 Q. Conti.

15 A. Conti.

16 Q. This is Phil Conti?

17 A. Phil Conti.

18 Q. Made some comments about Mr.
19 --- expressed some concerns about Mr.
20 Ober?

21 A. Yes.

22 Q. And verbally you say?

23 A. Yes.

24 Q. Well, did Mr. Conley ever
25 submit anything in writing?

1 ATTORNEY CHRISTIE:

2 You mean Mr. Conti.

3 A. Mr. Conti.

4 BY ATTORNEY BAILEY:

5 Q. I mean, Mr. Conti, anything in
6 writing?

7 A. Yes, he did.

8 Q. And you mentioned another
9 person, Hunt?

10 A. Yes.

11 Q. Who is that?

12 A. A retired major from the
13 Department.

14 Q. And did he submit things in
15 writing?

16 A. No, only Lieutenant Colonel
17 Conti did.

18 Q. Did you summarize or submit a
19 statement yourself on what, even
20 though it might have only been
21 hearsay, on what you had heard on
22 this matter?

23 A. No, sir.

24 Q. You didn't do that?

25 A. No.

1 Q. Did the investigator interview
2 you?

3 A. I don't recall. I don't
4 believe so.

5 Q. You don't believe so?

6 A. I don't believe so.

7 Q. Okay. Now, I was looking
8 through some of the enclosures here
9 that were in the inquiry itself. And
10 a lot of them purports to be, if I
11 remember correctly, a letter from Mr.
12 Conti to you; do you remember that?

13 A. I recall a letter from him,
14 sir.

15 Q. Do you remember what that
16 letter said?

17 A. Not specifically, no.

18 Q. Do you remember if that letter
19 indicated that Mr. Ober was doing
20 something wrong? I mean, did it
21 contain an accusation?

22 A. I believe it did.

23 Q. Well, how many letters did Mr.
24 Conti send you?

25 A. Only one that I can recall,

1 Mr. Bailey.

2 Q. And the letter that he sent
3 you would be included --- I mean,
4 that's something you would have given
5 to the investigator; right?

6 A. Yes, it would have been an
7 attachment in the investigation.

8 Q. Okay. Now, when he sent you
9 this letter, do you have a
10 recollection of whether or not he
11 included any kind of correspondence
12 in it?

13 A. I believe the letter was the
14 correspondence, sir. I mean, the
15 letter was making the allegation that
16 he had recited to me on two separate
17 occasions.

18 Q. Well, let me --- I don't know
19 where we are with exhibits on your
20 deposition.

21 ATTORNEY BAILEY:

22 Do you folks know if we
23 even had any? I don't think
24 we had any.

25 ATTORNEY CHRISTIE:

1 I don't think we did
2 have any exhibits marked with
3 Colonel Coury.

4 ATTORNEY BAILEY:

5 Give me just a moment.

6 A. Yes, sir.

7 ATTORNEY BAILEY:

8 I didn't expect your
9 response to be what it was. I
10 want to double check this.
11 For Counsel's benefit, I'm
12 looking at enclosures three
13 and four of the supervisory
14 inquiry.

15 BY ATTORNEY BAILEY:

16 Q. Were there --- I'm sorry.
17 There's a letter here, May 22nd,
18 1999. Would you kindly take a look
19 at that, sir?

20 ATTORNEY CHRISTIE:

21 Can you mark that,
22 Counsel, and can we get a copy
23 of it?

24 ATTORNEY BAILEY:

25 Sure. Yes. Let the

1 record show it should be
2 enclosure three, the
3 supervisory inquiry. It's
4 marked down at the bottom.

5 ATTORNEY CHRISTIE:

6 And are you marking it
7 Coury One?

8 ATTORNEY BAILEY:

9 Sure. Yes. I don't
10 think we had other exhibits,
11 so that's fine.

12 (Deposition Coury
13 Exhibit One marked for
14 identification.)

15 A. Yes, sir.

16 BY ATTORNEY BAILEY:

17 Q. Now, does that letter contain
18 some accusation of Darrell Ober; do
19 you know? If it does, can you point
20 it out to me. And giving you the
21 benefit of the doubt from where I'm
22 sitting, my question would be as
23 follows, give me anything there that
24 you can indicate for me or tell me
25 indicates that Captain Ober is doing

1 something improper or misrepresenting
2 something or if it's anything other
3 than --- well, it might be an
4 improper proprietary interest on Mr.
5 Conti's part. Who knows. I don't
6 know. But what generated that?

7 A. What generated this letter?

8 Q. Yes.

9 A. I don't recall what generated
10 this letter from Mr. Conti. I didn't
11 even recall seeing it until you just
12 showed it to me now. I don't recall
13 that this --- I don't recall this
14 being the letter that generated the
15 inquiry. I'm not saying it isn't.

16 Q. Well, if I told you that ---.

17 A. I'm not saying it isn't. I
18 don't recall it being the letter that
19 generated the inquiry.

20 Q. So you're saying there's
21 another letter somewhere?

22 A. No, I'm not saying that. I'm
23 just saying I didn't recall this
24 being the letter that generated --- I
25 thought it was a different letter.

1 It could be this one. But in any
2 event, the response to your question
3 is, the letter would tie into the
4 allegations that Mr. Conti made to me
5 verbally and ---.

6 Q. Well, ---

7 A. So there's a tie in between
8 those two things.

9 Q. --- did Mr. Conti give any
10 kind of statement or anything?

11 A. I don't know. I haven't
12 looked at that report probably since
13 I adjudicated it, sir.

14 Q. Well, I may be mistaken, but I
15 think you initiated the use of force
16 of complaint, that's the processing
17 form that you --- it was given a BPR
18 control number of IAD number 1999-409
19 on May 27th, 1999 at 12:35 hours, as
20 received by Captain Brown. Do you
21 have any reason to believe that's not
22 correct, that this information isn't
23 correct?

24 A. No, sir.

25 Q. Okay. Well ---.

25

1 A. I think, Mr. Bailey, in order
2 for me to accurately answer your
3 questions, what I need to do is look
4 at that entire packet that you're
5 referring to. I mean, it's very
6 difficult for me to accurately answer
7 your questions on bits and pieces,
8 sir.

9 Q. Okay. No problem. No
10 problem. No problem.

11 ATTORNEY BAILEY:

12 Whatever you have
13 there, help me put this thing
14 together for the Colonel,
15 please.

16 BY ATTORNEY BAILEY:

17 Q. Here you go.

18 A. Thank you, sir.

19 Q. Yes, sir.

20 A. May I have a few.

21 Q. Absolutely.

22 A. Time to look at this?

23 WITNESS REVIEWS DOCUMENT

24 OFF VIDEOTAPE

25 SHORT BREAK TAKEN

1 ON VIDEOTAPE

2 ATTORNEY CHRISTIE:

3 Just a point of
4 procedure, do you think,
5 Colonel Coury, that's a, what,
6 quarter of an inch thick
7 packet of papers which I
8 expect is your indication of
9 what this supervisory inquiry
10 is? Do you wish to break for
11 the Colonel to review the
12 material or do you wish him to
13 review while we just wait?

14 ATTORNEY BAILEY:

15 I think he'll be able
16 to go through that very
17 quickly. It's not --- a lot
18 of that stuff is boilerplate.
19 I think he'll zip through.

20 ATTORNEY CHRISTIE:

21 Okay.

22 ATTORNEY BAILEY:

23 And just so you know,
24 these are documents that I was
25 able to procure during the

1 document inspection, I
2 believe, if I remember
3 correctly, that you folks
4 provided. You may, if there
5 is more to the file, and I'm
6 not suggesting there is, you
7 would have it. So if you need
8 a break or want a break for
9 it, whatever --- I think it's
10 pretty complete, though, to my
11 knowledge.

12 ATTORNEY CHRISTIE:

13 Are you marking the
14 packet in total as Coury Two?

15 ATTORNEY BAILEY:

16 You know what I was
17 going to do, Barb, I was going
18 to just ask you to cooperate
19 to incorporate it by
20 reference. You know, it is an
21 official document of the ---
22 it's got a BPR number and a
23 supervisory inquiry number and
24 you two may want to confer,
25 but I thought we could,

1 instead of actually copying
2 it, if we could incorporate it
3 by reference as an exhibit.

4 ATTORNEY CHRISTIE:

5 Yes. I have no problem
6 ---

7 ATTORNEY BAILEY:

8 I would have no problem
9 with it if you want to have it
10 reproduced, but it's rather
11 cumbersome.

12 ATTORNEY CHRISTIE:

13 Yes. All right. I
14 have no problem incorporating
15 it by reference, but in order
16 to do that, I would need it
17 copied. And we'll put it on a
18 high-speed copy. It should
19 take a moment to copy it, once
20 the Colonel has reviewed it.

21 ATTORNEY BAILEY:

22 No problem at all.

23 Sure.

24 ATTORNEY CHRISTIE:

25 And then you'll be

1 marking the packet in total as
2 Coury Number Two; right?

3 ATTORNEY BAILEY:

4 Sure. Now, that's all
5 that I have on it to my
6 knowledge. Darrell, we could
7 maybe - - - .

8 ATTORNEY CHRISTIE:

9 Yes. See, I know that
10 you had to like put a piece of
11 the paper together there, so I
12 just want to ensure that we
13 know, by what's attached to
14 the record, what you complied
15 together as the supervisory
16 inquiry.

17 ATTORNEY BAILEY:

18 Right. So you know, I
19 was going to use parts of it,
20 but it was the Colonel who
21 felt that he needed the whole
22 thing. And naturally, I'm
23 giving him what I have.

24 ATTORNEY CHRISTIE:

25 Okay.

30

1 ATTORNEY BAILEY:

2 So I wasn't planning to
3 do that, but to accommodate
4 the Colonel.

5 ATTORNEY CHRISTIE:

6 All right. Well, we'll
7 make a quick copy of it so
8 that all of us have --- we'll
9 make a copy for you. We have
10 the exhibit copy. We'll make
11 a copy for us. Okay?

12 ATTORNEY BAILEY:

13 Thank you.

14 ATTORNEY CHRISTIE:

15 Sure.

16 ATTORNEY BAILEY:

17 Thank you. Can I get
18 my coffee now?

19 ATTORNEY CHRISTIE:

20 Yes, sure you can.

21 OFF VIDEOTAPE

22 SHORT BREAK TAKEN

23 ON VIDEOTAPE

24 ATTORNEY BAILEY:

25 We are just running ---

31

1 take time up. Why don't we
2 suspend and shut down the
3 recording, because we're just
4 eating up tape time and
5 wasting everybody's time.
6 Now, remember when this
7 gentleman reads camera time on
8 our camera, it may differ by a
9 few minutes. It's a
10 continuous run on the camera
11 clock. I noticed, Barb, you
12 had looked at the clock like
13 that's off. And it's off.
14 You know, it varies.

15 ATTORNEY CHRISTIE:

16 That's no problem.

17 ATTORNEY BAILEY:

18 Okay. Go ahead.

19 VIDEOGRAPHER:

20 Suspending video
21 operations. The time now is
22 10:27 a.m.

23 OFF VIDEOTAPE

24 SHORT BREAK TAKEN

25 VIDEOGRAPHER:

1 Resuming video. The
2 time now is, 10:50.

3 ON VIDEOTAPE

4 ATTORNEY BAILEY:

5 All right. Thank you,
6 everyone.

7 BY ATTORNEY BAILEY:

8 Q. Okay. Colonel, we have that
9 back in front of us. We might as
10 well start with the top form.

11 There's some discussion between
12 Counsel and I, if you remember,
13 during the break. And the top page
14 here says, date, December 23, 1999.
15 Subject is the supervisory inquiry
16 IAD number 1199409; is that correct?

17 A. Yes, sir.

18 Q. Do you know whether
19 supervisory inquiry IAD number, which
20 is marked down as a 409, do you know
21 whether there's a complaint
22 verification form done in that case?

23 A. I would think not, Mr. Bailey.
24 And the reason I would say that is
25 because of the correspondence that

1 was generated from Mr. Conti would
2 serve as a written notification, as a
3 written verification.

4 Q. Okay. Well, you know, I
5 thought you might say that as let's
6 look at the correspondence generated
7 from Mr. Conley.

8 (Deposition Coury
9 Exhibit Two marked for
10 identification.)

11 BY ATTORNEY BAILEY:

12 Q. Now, let me say this, this
13 exhibit, by the way, has been marked
14 as Exhibit Number Two, roughly 60
15 some pages. And the pages are not
16 individually marked so, you know, we
17 can go back and do this later, do
18 this at trial if necessary but let's
19 go back to see if we can find that
20 letter and find the letter from Mr.
21 Conti that you had just made
22 reference to. Okay. And it's ---.

23 A. I found it, sir.

24 Q. Okay. It would be --- it was
25 probably the original inquiry. It

1 Captain Darrell Ober after Bill's
2 death in 1995. Captain Ober is a
3 private collector and not
4 representative of our State Police
5 museum project.

6 Q. Well, let's start there.

7 A. Okay.

8 Q. Okay. Because you're the
9 gentleman, are you not, who on May
10 27th ---

11 A. Yes, sir.

12 Q. --- initiated this
13 investigation?

14 A. And as I had said to you,
15 Major Hunt and Colonel Conti had had
16 discussions with me on at least two
17 occasions I can recall and it was
18 mostly Lieutenant Colonel Conti who
19 alleged that he was receiving ---
20 having dialogued with retirees who
21 said that Captain Ober was going to
22 their homes seeking artifacts from
23 their deceased husbands ---.

24 Q. Just the way Colonel Evanko
25 calls them up or sends them letters,

1 too, the same way? Do you know?

2 A. I have no knowledge of ---.

3 Q. Did you launch an
4 investigation into Colonel Evanko's
5 activities in acquiring museum
6 artifacts?

7 A. I have no knowledge of what
8 you're referring to, Mr. Bailey.

9 Q. Okay.

10 A. In any event, ---

11 Q. Yes.

12 A. --- between Conti's dialogue
13 with me and the letters from Hayman
14 and the letter of March 22nd --- May
15 22nd, excuse me, what Conti was
16 saying was that Captain Ober was
17 using his ---.

18 Q. I mean, you mailed this ---.

19 A. May I finish, sir?

20 ATTORNEY CHRISTIE:

21 Let him finish.

22 BY ATTORNEY BAILEY:

23 Q. All right. Objection at this
24 point to your response, but you go
25 ahead and finish.

1 A. All I was going to say was
2 that Colonel Conti was alleging that
3 Captain Ober was using his title as a
4 member of the State Police to get
5 these artifacts from the people as
6 well as his position --- as well as
7 he was alleging that he was a part of
8 the State Police museum project. And
9 they felt, Conti, felt it was
10 inappropriate. I'm finished, sir.

11 Q. Okay. All right. You're
12 finished. Now, Mr. Conti's writings
13 will speak for themselves; won't
14 they?

15 A. Yes, sir.

16 Q. All right. And let's go back
17 and let's just sort of, again, let's
18 begin at the beginning and let's look
19 at this second paragraph of the March
20 15th, 1999 letter. Okay. And this
21 purports to be a --- this is one of
22 the pieces of correspondence that Mr.
23 Conti sent with you --- or sent along
24 with his May 22nd, 1999 letter to
25 you; is that correct, sir?

1 A. I believe it's correct, sir.

2 I mean, I don't ---.

3 Q. Well, you're the one that's

4 ---.

5 A. I don't recall.

6 Q. Okay.

7 A. I don't recall.

8 Q. He refers to an exchange of
9 letters with Marian Hayman; is that
10 right?

11 A. Yes.

12 Q. On the March 15th, 1999, isn't
13 the inside greeting address, Mrs.
14 Willis J. Hayman, dear Marian?

15 A. Yes.

16 Q. Is that what it says?

17 A. Yes.

18 Q. Now, the letter is not signed;
19 is it?

20 A. No.

21 Q. And it says up at the top, it
22 says, I received your letter last
23 week and the photographs you
24 enclosed. That's the first
25 paragraph. I'm sending you an

1 official acknowledgement for those
2 items and some others Bill sent to me
3 some time ago. What kind of official
4 acknowledgement? What's that about?

5 A. I don't know, sir.

6 Q. Well, where is the
7 Pennsylvania State Police museum,
8 sir?

9 A. Where is it? Do you mean
10 physically located or what ---?

11 Q. Yes, sir. I'd like to know
12 where it is.

13 A. There is no --- there's an
14 office in Hershey, Pennsylvania.

15 Q. Okay. Who maintains that
16 office?

17 A. The people from the museum.

18 Q. Who's on that board, sir, can
19 you tell us?

20 A. As if this day? I don't know
21 who was on the board in March of '99.

22 Q. Has your wife ever served on
23 the board?

24 A. Yes, sir.

25 Q. And I cut you off

1 inadvertently. I apologize. Would
2 you like to go back and finish? I'm
3 sorry.

4 A. No. I was ---.

5 Q. I cut you off at the question
6 about your wife and you had not
7 finished. Go ahead, sir.

8 A. I was just going to say that
9 the current president of the museum
10 is retired Major William Regan and
11 there's a board of about 15, I don't
12 know, 15 people.

13 Q. Is your wife a member at this
14 time? I'm sorry, sir. Was your wife
15 a member on or about March of 1999?

16 A. She was a member, whether she
17 was a member on or about 1999, I do
18 not know.

19 Q. Well, wouldn't you have
20 checked those --- I mean, how many
21 years, 30 years experience, and
22 particularly in the operational area
23 of Pennsylvania State Police were,
24 and as an investigator, at least as
25 an investigative police officer,

1 don't you check those kind of things
2 out before you launch an
3 investigation into a captain in the
4 Pennsylvania State Police?

5 A. I would see no connection
6 between the two, Mr. Bailey.

7 Q. Okay. Well, let's keep moving
8 along. Okay. Now, I'm sending you
9 an official acknowledgement for those
10 items. What is an official
11 acknowledgement? And I'd like to
12 know what's official about the museum
13 project, ---

14 A. Mr. Bailey, ---

15 Q. --- if you know.

16 A. --- at this time, I was not
17 part of the museum. I was not on the
18 museum board. I would not know. I
19 would not know, sir.

20 Q. Sir, please.

21 A. Yes, sir.

22 Q. We're talking about an
23 accusation that this gentleman here
24 misrepresented his badge of authority
25 and his position with the

1 Pennsylvania State Police. You told
2 us that?

3 A. Yes.

4 Q. Am I correct?

5 A. Yes.

6 Q. All right. Now, it just seems
7 to me, and all I'm asking is, that if
8 you're going to accuse someone of
9 doing something, you've got to know
10 the background of what he's
11 misrepresenting. So that's why I
12 would expect that you would know the
13 status and the organizational
14 structure and some information about
15 the museum commission. That's the
16 only reason I'm asking. If you're
17 telling me you don't know anything
18 about that, I will move on.

19 A. Well, first let me say, I was
20 not the accuser. Phil Conti was the
21 accuser. I submitted the paperwork
22 based on Phil Conti's.

23 Q. But you see, sir, I've been
24 doing all these depositions and
25 during these depositions I have

1 learned a great deal from you folks.
2 I have a lot of respect for how you
3 try to run your organization. One of
4 the things I've learned about your
5 respect for substantive and secretive
6 process is, there's this thing called
7 a complaint verification form. Where
8 is it? I haven't found it in this
9 inquiry yet. I looked for it,
10 because that's the way we're supposed
11 to do things. Now, you've already
12 explained to me --- you say, in this
13 case you don't think that would be
14 necessary.

15 A. In many ---.

16 Q. I'm sorry, sir. In many cases
17 Go ahead, sir. I interrupted you.

18 A. Well, let me say, if I didn't
19 make it --- did not explain in enough
20 detail that in, as I recall the
21 system, that operationally that when
22 they receive --- when they already
23 have a letter or something in writing
24 of the complaint, they didn't turn
25 around and send the person another

1 letter and ask them to fill out a
2 complaint and verification. So based
3 on my recollection of the system that
4 the letter from Conti would have been
5 the verification required.

6 Q. Well actually, the letter from
7 Conti, we're going to talk about that
8 in just a moment, but actually, the
9 letter from Conti says, I'm sending
10 you an official acknowledgement.
11 What was Conley's status at that
12 time?

13 A. Conti's status?

14 Q. Conti. I keep --- sir,
15 forgive me. I keep doing Conley when
16 I mean Conti. I apologize to you. I
17 mean, Mr. Conti, Mr. Philip Conti.
18 What was his --- was he --- it says
19 down here, you signed this,
20 Lieutenant Colonel, Pennsylvania
21 State Police Retired.

22 A. Yes.

23 Q. Now, up here in this first
24 paragraph he says, I'm sending you,
25 and this is the language he used,

45

1 official acknowledgement. Maybe he's
2 not --- maybe he is a fellow who's
3 misrepresenting in this case. Maybe
4 he's committing a misrepresentation
5 here. That's what I'm trying to
6 learn about. What is this official
7 acknowledgement? I've never seen ---
8 I can't find any paperwork on this
9 museum thing legislatively in
10 regulations. I'd like to know how
11 you fellows set this thing up.

12 A. We didn't set it up. It is a
13 501(c)(3) private corporation.

14 Q. Okay. 501(c)(3).

15 A. Non-profit organization.

16 Q. Yes, I know what that is. I
17 don't know a whole lot about them. I
18 never set one up, but I know a little
19 bit about them. I, you know, read
20 about them and stuff. But the thing
21 is, 501(c)(3) set up by a public
22 entity, by a public entity, the State
23 Police ---.

24 A. No, it's not set up by the
25 State Police. It's set up by a group

1 of retirees.

2 Q. A group of retirees. Okay.

3 Now, can you tell me who gave that
4 group of retirees a --- some sort of
5 proprietary or official interest. I
6 mean, if I set up at 501(c), what
7 makes my actions official? I mean,
8 to me official means state authority.

9 Maybe I'm thinking wrong.

10 A. That's his term. That's Mr.
11 Conti's determination. All I can
12 tell you is the Commissioner gave the
13 museum life by allowing them to use
14 the title, Pennsylvania State Police,
15 historical educational memorial.

16 Q. Who did that?

17 A. It would be under the
18 Commissioner and the governor's
19 office, but we'd have to get
20 permission to use the title. But
21 other than that, that's a private
22 organization. No active member of
23 the department sits on any board of
24 the museum.

25 Q. Well, does Mr. Evanko, does he

1 solicit things in the name of the
2 museum group; do you know? And if he
3 does, what's his connection with it?
4 I'd like to see, because I haven't
5 been able to learn that either. Do
6 you know of any?

7 A. His connection with the
8 museum?

9 Q. Yes. I'd like to know his
10 official connection.

11 A. He does not sit on any board
12 or any committee and the question of
13 his soliciting artifacts is a
14 question for the Commissioner. I'm
15 not aware of him soliciting
16 artifacts.

17 Q. Do you know whether he has any
18 in his office?

19 A. He has memorabilia in his
20 office, yes, sir.

21 Q. Do you know where he got them,
22 how he got them?

23 A. No, sir, I've never asked him.

24 Q. All right. Let's go to the
25 second paragraph, Colonel. It says,

1 I regret very much the visit made to
2 your home by Captain Darrell Ober
3 after Bill's death in 1995. Well, do
4 you know what Mr. Conti was doing
5 contacting her after Bill's death?

6 A. Mr. Conti was on the artifacts
7 committee, so anything other than
8 that would be an assumption on my
9 part.

10 Q. All right. So you're assuming
11 that Mr. Conti contacted Marian after
12 Bill's death in 1995?

13 A. That's obvious from the letter
14 that he contacted her after Bill's
15 death.

16 Q. I agree with you. And he says
17 he regrets a visit made by Captain
18 Darrell Ober.

19 A. Yes.

20 Q. What possible grounds, if you
21 know, from your investigation of this
22 matter and your review of the
23 investigation that was subsequently
24 done after you launched the official
25 investigation, what possible regret

1 could he have for Mr. Ober, and I
2 realize it was unfounded and I credit
3 you for doing the proper thing when
4 it was over, but my question is, what
5 did Mr. Ober do, if you know? If you
6 know. Yes.

7 A. I can tell you what Mr. Conti
8 told me tying the March 15th letter
9 to the May 22nd letter, he said that
10 Captain Ober went to, and I don't
11 recall it being this specific person,
12 I can't say Marian Hayman, but that
13 the nature of the allegation was that
14 Captain Ober was going to the door
15 using the name Captain Darrell Ober
16 of the Pennsylvania State Police and
17 collecting artifacts for the
18 Pennsylvania State Police museum. So
19 what he's saying is he regrets the
20 fact that Captain Ober went to her
21 home and was collecting artifacts in
22 the name of the Pennsylvania State
23 Police museum.

24 Q. All right. Now, we already
25 know that the investigation

1 demonstrated that that was unfounded.
2 A. That's correct, sir.
3 Q. All right. Now, that's fine.
4 Why didn't you at this stage, though,
5 say to Mr. Conti, Bill, assuming he's
6 an old friend or colleague or someone
7 you know, Bill, that's pretty
8 serious, would you get me, you know,
9 before I go out investigating
10 somebody, I mean I'd like to get ---
11 I mean, do you have some kind of an
12 affidavit? Can you execute some kind
13 of an affidavit or give me something
14 a little more substantive? Because
15 I'll tell you, sir, as I read the
16 March 15th letter, I do read it
17 differently than you, but it doesn't
18 matter what I see. My question is,
19 did you ask Mr. Conti to give you
20 something of a more substantive or
21 definitive nature that would indicate
22 that Captain Darrell Ober was
23 misrepresenting himself and/or the
24 Pennsylvania State Police and/or the
25 501(f)(c)(3) you mentioned earlier?

1 Did you ask him to do anything like
2 that, Mr. Conti?

3 A. After the verbal conversations
4 with him, I asked him to put
5 something in writing.

6 Q. Well, I regret --- is that
7 what produced the letter of --- let
8 me see. There's a July letter. Let
9 me see where that is.

10 ATTORNEY BAILEY:

11 Can you help me find
12 that?

13 ATTORNEY CHRISTIE:

14 Are you talking
15 enclosure number four,
16 Counsel?

17 ATTORNEY BAILEY:

18 Is that what it is?
19 That's what it is?

20 ATTORNEY CHRISTIE:

21 Yes, July 9th, 1999.

22 ATTORNEY BAILEY:

23 You're wonderful,
24 Barbara as usual. July 9th,
25 1999.

1 ATTORNEY CHRISTIE:

2 Is that the one you're
3 looking for?

4 ATTORNEY BAILEY:

5 Yes. Yes, that's the
6 one. Okay.

7 BY ATTORNEY BAILEY:

8 Q. Now - - - .

9 A. May I find that document?

10 Q. Yes, sir, it's right behind
11 the one we just looked at, right
12 behind number three.

13 A. Okay.

14 Q. Here it is.

15 A. I have it, yeah.

16 Q. Okay. Now, is that the letter
17 you're referring to?

18 A. Let me ask you to ask your
19 question again, Mr. Bailey, I sort of
20 lost track.

21 Q. I may have misunderstood your
22 - - - yes, sir, I'm sorry. I may have
23 misunderstood a response of yours,
24 but you had indicated, I thought you
25 had indicated, now, you correct me if

1 I'm wrong, and your Counsel, your
2 very able attorney will indicate or
3 correct me if I'm wrong, I thought
4 you had indicted that there was some
5 type of response and written form
6 from Mr. Conti that was more
7 definitive, I may have misunderstood
8 you, and that that was something that
9 you had based a decision on or that
10 affected you in terms of your
11 conduct.

12 A. In initiating the complaint?

13 Q. In initiating, sir.

14 A. No. It would have been the
15 March 15th letter tied in with his
16 current letter.

17 Q. Okay. And the reason you're
18 saying that is that the facts are
19 quite clear that the complaint was
20 initiated on the 27th of May, 1999
21 and this letter is dated July 9,
22 1999; right? I mean, this is well
23 after the fact; right?

24 A. This is after the May letter,
25 yes, sir. This is after the May

1 adjudication. But what it indicates
2 is what Conti had been telling me
3 verbally and that is that he felt
4 that Captain Ober was using his
5 department title.

6 Q. See, that's what I'm having a
7 real hard time with, you keep telling
8 us that, and we have no way of
9 checking this, because, for the
10 record, Mr. Conti has passed on; is
11 that correct?

12 A. Yes, sir.

13 Q. Okay. So we have no way of
14 confirming that and you're telling us
15 what Mr. Conti has told you verbally,
16 but you at no time asked him to give
17 a statement to somebody. You asked
18 him at no time to be more definitive
19 in his writings. And then I'm going
20 to go back to this paragraph that you
21 told us was the reason, we're going
22 to revisit it, and that would be back
23 there, that's the March 22nd letter.
24 And, you know --- May 22nd, I'm
25 sorry, sir. May 22nd letter that

1 refers to enclosure 15, supposedly
2 the March 15th letter, and I'm going
3 to go into that paragraph in the
4 March 15th letter. My question is
5 real, real simple. There was no
6 effort made to reduce anything that
7 Mr. Conti said to any kind of
8 verifiable or sworn or declaratory
9 form that could be used as the basis
10 of a complaint?

11 A. That's the job of the
12 investigator, Mr. Bailey. According
13 to AR425, when a member receives
14 notification of a possible violation
15 from a member, you know, you fill out
16 the complaint sheet, you pass it on
17 and the investigator does those
18 things, I had two verbal
19 conversations with Conti and I told
20 him to put something in writing. He
21 put that in writing and I passed it
22 on. And yes the May 22nd letter said
23 something about forgetting it and
24 moving on. A member doesn't have the
25 luxury of saying forget it. I mean,

1 once somebody gives you a complaint,
2 it's pretty difficult for them to
3 call and say, I don't want to do
4 anything about it, let's forget it.
5 I mean, now that it's a complaint and
6 you know it, that member's under some
7 obligation to see it's followed
8 through.

9 Q. Okay. Well, you referred to
10 it as a complaint. So let's go back
11 to --- and that's where there may be
12 an honest disagreement here. Let's
13 go back to enclosure 15. By the way,
14 was Mr. Conti ever interviewed?

15 A. I don't recall. I only
16 thumbed through these to get those.

17 Q. Sir, please. You have told us
18 that Mr. Hunt made certain verbal
19 representations to you ---

20 A. Yes.

21 Q. --- of a substantive nature
22 about the conduct or alleged conduct
23 of Mr. Ober. Did I misunderstand
24 you?

25 A. You just asked me --- you said

1 that Mr. Hunt made allegations, but
2 your question to me, was Conti ever
3 interviewed.

4 Q. And then I misspoke. I'm in
5 error. I thought I asked if Mr. Hunt
6 was ever interviewed. In fact, I
7 thought I read it off the page. I
8 made a mental error and I'm sorry.

9 A. I did not see an interview in
10 here from Mr. Hunt.

11 Q. You verified this thing as
12 unfounded. Mr. Hunt had told you
13 things. You reviewed this
14 investigation and you didn't call
15 that investigator up and say, why
16 didn't you investigate or why didn't
17 you talk to Hunt? Didn't you tell
18 him about Hunt?

19 A. Mr. Bailey, there was enough
20 facts in here to adjudicate it
21 without Hunt's statement. Why would
22 you already go back and have him
23 re-interviewed when you know it's
24 unfounded?

25 Q. Wait a minute, sir. You told

1 me ---.

2 A. I mean, I'll ---.

3 Q. I'm sorry, sir.

4 A. No. I apologize. Go ahead.

5 Q. You told me that before you
6 initiated this complaint you had
7 received verbal representation,
8 verbal, your words, verbal, from Mr.
9 Conti and Mr. Hunt, sir. That's what
10 you told me.

11 A. Yes.

12 Q. Now, you're telling me
13 apparently you didn't even pass on in
14 written or verbal form to the
15 investigator that Mr. Hunt had made
16 alleged comments, inculpatory
17 comments, not exculpatory,
18 acquisition-type of comments, against
19 Captain Ober and you never told the
20 investigator or the investigator
21 never interviewed Mr. Hunt or
22 investigated it. And further you
23 have told me, and then I'll ask you
24 the specific questions, further you
25 have told me, I'm characterizing your

1 testimony now and you're to correct
2 me if I'm in error, furthermore you
3 told me that you reviewed this thing
4 and you --- because you told us you
5 adjudicated it. Okay.

6 A. Yes, sir.

7 Q. I mean, I do my homework
8 before I come to these depositions
9 and I know the stage that I've gone
10 through in reviewing this matter and
11 asking you questions. And you have
12 told us what the record revealed to
13 me that you adjudicated it. Now, if
14 you initiated the complaint, not
15 formally but according to what you've
16 described to us was a proper form,
17 you provided information either in
18 written or verbal form to the
19 investigators, the investigator, is
20 Mrgich?

21 A. Yes.

22 Q. And you indicated Mr. Hunt ---
23 you don't remember Mr. Hunt being
24 interviewed. I can tell you there's
25 no record of Mr. Hunt being

1 interviewed in here, at least that I
2 can find. If you can find one, you
3 let me know and I could be wrong.
4 Now you told me you reviewed it and
5 you never asked the investigator to
6 check on Mr. Hunt's allegations, now
7 because it was unfounded. Now, just
8 explain it to me, please. Explain to
9 me why Mr. Hunt doesn't appear, why
10 he wasn't interviewed. Just explain
11 that, if you can.

12 ATTORNEY CHRISTIE:

13 Objected to as a
14 misstatement you say while Mr.
15 Hunt doesn't appear. Mr.
16 Hunt's does, in fact, appear
17 on, although it's not listed
18 as an enclosure, a 2/12/2001
19 to, from, from Major Pudliner
20 to Lieutenant Colonel Conley
21 ---

22 ATTORNEY BAILEY:

23 Can you tell me what
24 page that is on?

25 ATTORNEY CHRISTIE:

1 --- as the contact
2 person, let's see, as the
3 contact person to rely
4 information concerning I guess
5 it's Mr. --- or Ms. Poso.

6 ATTORNEY BAILEY:

7 Wasn't that after the
8 adjudication was completed? I
9 think that's what the Colonel
10 was trying to tell me. Maybe
11 I'm wrong. What page are you
12 on there?

13 ATTORNEY CHRISTIE:

14 Well, this page is not
15 marked so I'll just say we're
16 maybe like 12 pages, 14 pages
17 into the packet.

18 ATTORNEY BAILEY:

19 Ms. Poso. Would you
20 look at the date at the top of
21 that, please?

22 ATTORNEY CHRISTIE:

23 I see the date.

24 ATTORNEY BAILEY:

25 What does it say?

1 ATTORNEY CHRISTIE:

2 Well, you said that Mr.
3 Hunt was not mentioned ---

4 ATTORNEY BAILEY:

5 No, I did not.

6 ATTORNEY CHRISTIE:

7 --- in the supervisory
8 inquiry. He was not mentioned
9 in that context as a relayer
10 of information concerning Ms.
11 Poso's complaint.

12 ATTORNEY BAILEY:

13 All right. Just a
14 minute.

15 ATTORNEY CHRISTIE:

16 Or Mr. Poso's
17 complaint.

18 ATTORNEY BAILEY:

19 Okay. Let me just go
20 back to my questions.
21 Incidentally, that's something
22 that was added into this file
23 after the adjudication. If
24 you look at the adjudication
25 date, the form says, December

1 23, 1999. The date that you're
2 talking about there on that
3 thing is February 2001. Right
4 now, let me get back to
5 specific questions if I can
6 and it will clarify it. Okay?

7 BY ATTORNEY BAILEY:

8 Q. Sir, do you have a
9 recollection of saying to the
10 investigator sharing with the
11 investigator Mr. Hunt's comments or
12 remarks to you about Mr. Ober?

13 A. I don't recall, Mr. Bailey. I
14 don't.

15 Q. Okay. Do you have a
16 recollection of making any kind of
17 notes or notations about Mr. Hunt?

18 A. No, sir, I don't recall.

19 Q. All right. When you did the
20 adjudication which means you would
21 review the materials in the file, of
22 course. When you did the
23 adjudication, do you have a
24 recollection of being concerned that
25 Mr. Hunt's comments to you were not

1 the subject of an inquiry or review
2 or were not in the investigation?

3 A. Not at all, sir.

4 Q. Okay. And so whatever Mr.
5 Hunt may have said, and you're
6 certainly welcome to tell us what he
7 told you, if you'd like to, and I
8 would invite you to do that, if you
9 would care to, if you want to, but
10 the point is that whatever Mr. Hunt
11 may have said, when you reviewed the
12 investigation you were satisfied that
13 it was unfounded, based on what you
14 knew and you did have some factual
15 knowledge, since some of these
16 hearsay allegations have been passed
17 onto you, you were satisfied that it
18 was unfounded; am I correct?

19 A. Hunt and Conti would have had
20 no factual information. They would
21 have been relaying what they heard
22 from retirees. The names of those
23 retirees are known. The
24 investigators went to those retirees.
25 And that's factual information, so I

1 wouldn't need any information from
2 Conti or Hunt to make a proper
3 adjudication.

4 Q. Okay. Let's go to enclosure
5 15 then and we'll finish up that
6 second paragraph. Do you have it in
7 front of you?

8 A. Yes, sir.

9 Q. Okay. I regret very much the
10 visit made to your home by Captain
11 Darrell Ober. I think I've asked you
12 about that. I don't know what the
13 regret was for and apparently you've
14 given us the benefit of what you feel
15 that might mean, so the record would
16 speak on that issue. Now, let's go
17 to the second sentence. Captain Ober
18 is a private collector and is not a
19 representative of our Pennsylvania
20 State Police museum project. Sir,
21 you testified to me earlier in that
22 deposition that the museum group and
23 commission was a private 501(c)(3);
24 didn't you?

25 A. It's a non-profit 501(c)(3)

1 yes, sir.

2 Q. What did these words, our
3 Pennsylvania State Police museum
4 project, did that concern you? Isn't
5 that a misrepresentation?

6 A. It's a Pennsylvania State
7 Police historical educational museum
8 project.

9 Q. Well, you told us that there
10 was some authority given to give it a
11 name.

12 A. Yes.

13 Q. To me, now maybe because I'm
14 one of these lawyer types, to me, the
15 idea, our Pennsylvania State Police
16 museum project, are you telling us
17 that that 501(c)(3) is the
18 Pennsylvania State Police museum
19 project or is it a private 501(c)(3)?

20 A. It's a private 501(c)(3).

21 Q. All right. Let's go to the
22 next sentence.

23 A. All right.

24 Q. Therefore, those items you
25 surrendered to him, obviously at this

1 pleading. Now, I have a little bit
2 of a distorted copy here, but it
3 looks like that was underlined. Do
4 you know whether that sentence was
5 underlined there?

6 A. I can't tell, Mr. Bailey, I
7 don't know.

8 Q. You don't remember doing that?

9 A. No, sir, and I don't know why
10 I would.

11 Q. Okay. I'm not suggesting that
12 you would or did, I don't know, but I
13 know it was underlined. Therefore,
14 those items you surrendered to him,
15 obviously at his pleading will not be
16 a part of our collection. How do you
17 know --- do you know how Mr. Conti
18 reached the conclusion that they ---
19 let me use this underlined word will,
20 will not be a part of our collection.
21 Did you call Captain Ober up? Did
22 Mr. Conti call Captain Ober up and
23 say, hey, what are you doing out
24 there? Can you help us? Would you
25 like to work with us or anything like

1 that?

2 A. I don't know if Mr. Conti ever
3 called Captain Ober or not. I
4 certainly wouldn't. I was not part
5 of the museum project.

6 Q. Now, I want to read this last
7 sentence to you. And, you know,
8 you're a police officer, a lot of
9 years of experience. I want you to
10 tell me, you read this letter, given
11 to you by Mr. Conti, before you
12 launched this investigation, if
13 anyone should come to your home
14 soliciting artifacts, please get in
15 touch with me right away but give him
16 nothing?

17 A. Uh-huh (yes).

18 Q. On what authority would Mr.
19 Conti be allowed to or be able to
20 make that representation to a private
21 lady who is the widow of an honored
22 Pennsylvania State Police officer
23 with many years of service? Where
24 does he get --- if you know and I'm
25 not saying you do now, but where

1 would he get the authority to say
2 something like that? Do you believe
3 he has that authority to make that
4 --- to give somebody that advice or
5 say that to somebody that way?

6 A. He can give anybody advice on
7 anything he wants to, but that
8 doesn't certainly mean he has
9 authority to do so.

10 Q. Well, that's the issue with
11 Captain Ober.

12 A. I know what Colonel Conti is
13 referring to here. I mean ---.

14 Q. Well, why wouldn't you give
15 Captain Ober that much room, pick up
16 a telephone and call him and say,
17 hey, Captain, you know, this is ---
18 what's going on here, just an
19 explanation? That's improper. But
20 Mr. Conti can say, if anyone should
21 come to your home soliciting
22 artifacts, which everybody has a
23 right to do, commonsense tells you
24 that, and you knew it was a
25 501(c)(3), please get in touch with

1 me right away, but give him nothing.
2 I mean, didn't you say to Mr.
3 Conley, wait a minute, you know, you
4 can't --- you don't have some --- you
5 know, this is not a State Police
6 function you're performing here.
7 You're not representing the State
8 Police here, sir. I mean, I'm sure
9 he's a wonderful man, he was a
10 wonderful man, I'm sure and I'm sure
11 he was a great fellow. But I mean,
12 why can't you --- you know, I know he
13 can say anything he wants to, that's
14 not to say it's legally proper, you
15 know, and I'm not saying he should
16 be, you know, treated in a negative
17 or angry way about it, but shouldn't
18 he have least been informed that
19 that's not
20 --- I mean, that clearly --- he
21 doesn't have the authority to say
22 something like that; does he? Did
23 you believe at that time that he did
24 have the authority to tell Marian
25 Hayman, if anyone should come to your

1 home soliciting artifacts, please get
2 in touch with me right away but give
3 him nothing?

4 A. Well, he doesn't have the
5 State Police authority to do that.
6 Any other question is a question for
7 the museum group, Mr. Bailey.

8 Q. But he signed it Philip M.
9 Conti, Lieutenant Colonel PSP
10 retired.

11 A. Retried, that's right. We
12 have no control whether he uses his
13 title or not after he retires. The
14 Department has no control over
15 retirees. What Colonel Conti is
16 saying here is that here was a lady
17 who thought she was giving her,
18 because she's elderly, she's a widow,
19 she thought she was giving her
20 artifacts to a museum and she gave
21 them to a private collector. He's
22 giving her some advice. In the
23 future, if you don't know. Call me
24 first.

25 Q. Well, you know ---.

1 A. She thought they were going to
2 end up in the State Police museum,
3 not in somebody's private collection.

4 Q. You talked to her?

5 A. No, that's what Colonel Conti
6 told me. That's what Hunt told me.

7 Q. That's what Colonel Conti ---
8 did Mrgich tell you that?

9 A. I don't recall of any
10 discussion with Mrgich. I read his
11 report. That doesn't mean I had a
12 discussion with him.

13 Q. Yes, that's true.

14 A. I mean, it's in the
15 investigation what the lady believed.

16 Q. Well, if a private collector,
17 let's say Colonel Evanko sends a
18 letter to somebody and signs it
19 Colonel Evanko, Commissioner
20 Pennsylvania State Police, and is
21 indicating that this person might
22 have some artifacts and might have
23 some --- you know, may want to do
24 something with them or send them into
25 him or for that matter send them to

1 the museum. Why is the 501(c)(3) any
2 more authorized or preferable or
3 profitable in your eyes as an entity
4 to solicit out there in the private
5 domain than a private collector?
6 What gives the Pennsylvania State
7 Police the authority to assist the
8 501(c)(3) or doesn't it have that
9 authority?

10 A. I don't see where --- no
11 member --- no active --- I guess it's
12 no Commonwealth employee, actually,
13 can solicit. Solicitation is not
14 part of Commonwealth activities, so
15 that's why there's no active members
16 on any museum committee because of
17 the solicitation of funds,
18 solicitation of artifacts which have
19 value.

20 Q. Are any of the letters that
21 Colonel Evanko sent out, are they
22 solicitations in nature or ---?

23 A. I'm not aware of any letters
24 you're referring to, Mr. Bailey.

25 Q. Yes, and I don't infer or

1 think that he would necessarily do
2 that or do that for any improper
3 purpose. It's just a matter of, you
4 know, what I'm concerned about here
5 is, sir, was this investigation used
6 as a way to punish or to intimidate
7 Captain Ober? Is that what it was
8 for or about?

9 A. If that were the purpose, it
10 wouldn't be unfounded. I guess if I
11 wanted to do that, I could have found
12 a way to make it founded, you know.
13 If you're implying that I would do
14 something like that, then I would
15 have went the whole way and made it
16 founded.

17 Q. You're getting angry.

18 A. No, I'm being serious.

19 Q. I appreciate your seriousness.
20 Now, did you take Captain Ober off ,
21 PREVIOUSLY SWORN, CALLED TO TESTIFY
22 the book committee?

23 A. I did not, sir.

24 Q. Who did?

25 A. That would have had to have

1 been the Commissioner, sir.

2 Q. Why did the Commissioner take
3 him off the book committee?

4 A. I don't know, sir. The book
5 committee which was part of the ---

6 Q. The centennial.

7 A. --- centennial committee all
8 came under the Deputy of Staff and
9 the Commissioner's office.

10 Q. And that would be Mr.
11 Westcott?

12 A. No, that would have been at
13 that time either Colonel March or
14 Colonel Hickes. I don't recall who
15 it would have been.

16 Q. I thought, I may be mistaken,
17 but I thought you had indicated in
18 response to an earlier question that
19 it was Colonel Evanko that took him
20 off of that book committee. I could
21 be mistaken.

22 A. I think it would have been.

23 Q. Okay. Well, I mean, do you
24 know whether it was or not?

25 A. I don't know. I don't recall,

1 let's put it that way. I may have
2 known then. I don't recall now, Mr.
3 Bailey.

4 Q. Okay. Wasn't that book
5 committee supposed to produce a
6 product, you know, a report or book
7 or whatever, sometime about 2004,
8 2005?

9 A. A book was part of that and I
10 guess it would have been for the
11 hundredth --- I guess it would have
12 been for 2004, 2005.

13 Q. Yes, that's right. And when
14 did Colonel Evanko take him off of
15 that committee?

16 A. I don't know, sir.

17 Q. Well, do you remember the
18 reasons why he was taken off of that
19 committee?

20 A. Yeah. I think one of the
21 reasons why was because he was on the
22 IIMS project, now that I think about
23 it and he was on the panel to select
24 the systems integrator.

25 Q. Yes. And then he was

1 transferred to Washington.

2 A. After he completed that
3 assignment, yes, sir.

4 Q. Well, you know, I realize ---
5 you know, your deposition has been
6 continuing here. Do you know that
7 you've testified that way and the
8 Colonel's testified that way. And I
9 started reading some documents and
10 start reading when reports were due
11 and start reading some schedules and
12 are you sure that there isn't a
13 material difference here, a fact
14 between the participants in this
15 lawsuit as to when those IIMS
16 schedules and dates were met, what
17 meetings, when the contract was voted
18 on and what Captain Ober's role was?

19 ATTORNEY CHRISTIE:

20 I object. You're
21 asking the witness to make a
22 legal conclusion about a
23 material difference in fact, I
24 don't know, whatever, like a
25 summary judgment motion or

1 something.

2 ATTORNEY BAILEY:

3 Well, let me withdraw
4 it and rephrase.

5 ATTORNEY CHRISTIE:

6 I would object to that.

7 ATTORNEY BAILEY:

8 Let me rephrase.

9 BY ATTORNEY BAILEY:

10 Q. On what do you base, on your
11 own knowledge, on what do you base
12 your representation under oath in
13 this deposition that Captain Ober's
14 efforts and participation with IIMS
15 for what he was appointed to do, the
16 system integrator that everybody
17 keeps throwing out on the table in
18 front of me, that that was completed
19 at the end of '99 or so. What was
20 it, '99? 2000, I'm sorry. 2000.
21 Too many facts packed up in my head.
22 I'm sorry.

23 A. I don't know anything about
24 the dates. All I can tell you is
25 that when Captain Ober was under my

1 command, I was told that he was going
2 to be a part of the IIMS project to
3 select the systems integrator and I
4 know from hearing, I guess it was the
5 Deputy Commissioner of Staff and in
6 conversations with Colonel Evanko
7 that he had completed his portion of
8 selecting the systems integrator.
9 What that selection process is, I
10 don't know. I don't know what the
11 cut off line is, but certainly the
12 Deputy Commissioner of Staff and the
13 Commissioner felt that he had
14 fulfilled that role.

15 Q. So you don't know of your own
16 knowledge, you just know that the
17 Commissioner, based on what you've
18 heard, had reached that conclusion;
19 right?

20 A. That's correct, sir.

21 Q. Why was he sent back to IAD
22 for like a matter of a few days? Do
23 you know why that was?

24 A. I don't recall, sir.

25 Q. You don't know what the reason

1 for that was?

2 A. I recall the Commissioner had
3 assured Captain Ober that after the
4 IIMS project that he would be
5 returned to BPR. That was important
6 for Captain Ober to do that.

7 Q. Well, that was an agreement
8 they'd made that was put in writing?

9 A. I don't know if it was put in
10 writing or not. I don't recall, sir.

11 Q. Well, I can tell you it was
12 put in writing. I'm representing.

13 A. I don't recall, sir.

14 Q. And it probably would have
15 been grievable if the Colonel didn't
16 do it, so the Colonel sent him back
17 for a few days so it wouldn't be
18 grievable, I guess. Did you ever
19 discuss that with the Colonel, the
20 reason for that?

21 A. For?

22 Q. For just sending him back
23 there to IAD for a few days and then
24 sending him out to Washington.

25 A. I don't believe I had any

1 discussions with the Colonel about
2 it.

3 Q. When you transfer somebody in
4 the Pennsylvania State Police and
5 it's not specified in the transfer
6 order, it is custom practice and
7 usage of the Pennsylvania State
8 Police that it's permanent? You know
9 that from being in the Pennsylvania
10 State Police; don't you?

11 A. Well, it depends on what the
12 order says, whether it says it's
13 temporary. If it doesn't say it's
14 temporary, then it's permanent in
15 nature.

16 Q. That's what I'm looking for.
17 Okay. On enclosure 15, that should
18 still be in front you.

19 A. Yes, sir.

20 Q. It says, last sentence of the
21 third paragraph, whatever you can
22 give us for the museum will be picked
23 up by a trooper from the Mercer
24 barracks. What are troopers from the
25 Pennsylvania State Police and the

1 Mercer barracks doing on state time
2 with state vehicles going out and
3 picking up stuff for a private
4 501(c)(3) and did you investigate
5 that?

6 A. I don't know where it says on
7 state time in a state vehicle.

8 Q. So you figure the trooper,
9 this unnamed trooper, you assumed,
10 was a member of the committee acting
11 on private time, that's what you
12 assumed from reading it?

13 A. I didn't assume anything about
14 it, Mr. Bailey. And who would I
15 investigate, Mr. Bailey, Colonel
16 Conti?

17 Q. Why not?

18 A. He's not a member of the
19 Department.

20 Q. Why not ask him?

21 A. He doesn't fall under those
22 regulations.

23 Q. But you went out and
24 interviewed Ms. Hayman; didn't you?
25 Didn't somebody go out and interview

1 her?

2 A. Yes.

3 Q. Well, what's to prevent you
4 from asking your friend, Mr. Conti, a
5 few questions before this horse gets
6 out of the barn?

7 A. Me?

8 Q. Sure.

9 A. Well, that's the
10 investigator's job. If I do all of
11 that, Mr. Bailey, I'm the
12 investigator. I'm not an
13 investigator. According to AR425, we
14 take a complaint, we pass it on to
15 BPR and they conduct the
16 investigation, sir.

17 Q. Do you ask them ---?

18 A. The only thing material from
19 me was when I got the letter, passed
20 it on and then adjudicate the
21 findings against Captain Ober.

22 Q. Against --- you didn't mean
23 that.

24 A. Well, in reference to Captain
25 Ober, sir.

1 Q. Okay. I've got you now.

2 Okay. I'm going to touch on just a
3 couple more little things. One of
4 them that's really concerned me that
5 I want to question about is, do you
6 know a Pennsylvania State Police
7 major by the name of Dewire?

8 A. Yes, I do, sir.

9 Q. Do you have a high opinion of
10 Mr. Dewire?

11 A. Yes.

12 Q. I can tell you he has a high
13 opinion of you. And how long have
14 you known Mr. Dewire?

15 A. Probably around ten years. I
16 mean, I've known of him for 30 some
17 years, but I've known him and worked
18 intermittently with him from 1993 to
19 2002.

20 Q. Okay, sir. And around the
21 time complained of in the complaint,
22 what was Mr. Dewire doing? I mean,
23 what position did he hold for the
24 Pennsylvania State Police?

25 ATTORNEY CHRISTIE:

1 Counsel, just for my
2 clarity, which complaint? Are
3 you still on the museum
4 complaint or are you talking
5 about your client's complaint?

6 ATTORNEY BAILEY:

7 No. I have a few more
8 questions. My client is
9 helping me put some things
10 together then I'll come back
11 to that. Right now, I'm
12 sorry, usually I tell you when
13 I'm shifting. I'm going to be
14 asking some questions about a
15 challenge to Mr. Ober's
16 fitness for duty. So I'm in a
17 different category now.

18 ATTORNEY CHRISTIE:

19 So you need to know
20 Major Dewire's whatever, ---

21 ATTORNEY BAILEY:

22 No, no, no, no.

23 ATTORNEY CHRISTIE:

24 --- activities at the
25 time. When you say of the

1 filing of the complaint, are
2 you talking about this lawsuit
3 or back when he had the
4 supervisory inquiry?

5 ATTORNEY BAILEY:

6 No, no. Your question
7 is very well taken and let me
8 clarify.

9 ATTORNEY CHRISTIE:

10 Thank you.

11 ATTORNEY BAILEY:

12 Yes. Certainly.

13 BY ATTORNEY BAILEY:

14 Q. Counsel is quite right. That
15 was not a very clear transition. Let
16 me see if I can help. When Mr., I'll
17 give you a little author, so you know
18 where I'm coming from, when Mr.
19 Dewire did his deposition, he made
20 mention of an inquiry by you about
21 Mr. Ober's fitness for duty. I want
22 to ask you questions about that;
23 okay?

24 A. Yes, sir.

25 Q. Okay. Did you ever, at any

1 point, talk to Mr. Dewire about Mr.
2 Ober's fitness for duty?

3 A. No, sir.

4 Q. Did you ever, at any time,
5 invite Mr. Dewire over to your office
6 to ask him about how Captain Ober was
7 getting along or performing his job?

8 A. Not performing his job, about
9 how he was getting along, yes, sir.

10 Q. And at that time, did you have
11 a Mr. Larry Walker with you?

12 A. I believe so, sir. Not with
13 me, in my office, sir, yes.

14 Q. Well, where was Captain Ober
15 working at that time, Colonel?

16 A. Liquor control enforcement.

17 Q. And that's why you had Mr.
18 Dewire come over; right?

19 A. Yes, sir.

20 Q. Well, what caused you to make
21 the inquiry of Mr. Dewire?

22 A. Let me first go back and say
23 that going back to the early '90s,
24 Captain Dewire --- I was a major,
25 Captain Dewire was a captain,

1 Lieutenant Ober was then, I believe,
2 a sergeant. And I'm sure your
3 clients told you, I'm responsible for
4 his promotions. I've certainly been
5 an advocate of his for many years and
6 helped him attain the rank he has. I
7 know that Major Dewire had a lot
8 confidence and support for Captain
9 Ober so I know they know each other
10 well. So now as it turns out, I'm a
11 colonel, Dewire's a major, Captain
12 Ober is under his command. I had
13 heard from the union, and it's
14 certainly probably pretty obvious
15 that Captain Ober was under a lot of
16 stress, he had filed grievances, he
17 was having attorney fees because he
18 was asking that that FOP, the PSTA
19 for money to help with his legal
20 fees. And that the union had
21 mentioned to me, a number of times,
22 you know, about Captain Ober's
23 plight, if you will, against the
24 Department. And in one of those
25 conversations it was mentioned, and

1 look, the guy is really under a lot
2 of stress, make sure, you know, you
3 don't have somebody that's going to
4 have some mental difficulties or some
5 problems. And because of that, who
6 would know better and it would be
7 Major Dewire. So yes, I had Major
8 Dewire in my office about it.

9 Q. Who from the union, sir? Who?

10 A. It was Lou Lazarro (phonetic)
11 or Paul McCommons.

12 Q. Paul who, sir?

13 A. McCommons.

14 Q. What did they say to you? Try
15 to think back for a moment and be
16 more specific to what language they
17 used.

18 A. That he was under stress.

19 Q. I mean you no disrespect, ---

20 A. Yes, sir.

21 Q. --- but I have been privileged
22 since starting my civil rights
23 practice to represent a wide variety
24 of police officers in a wide variety
25 of situations and I'm proud of that.

. 90 .

1 And I have learned it may very well
2 be the most stressful occupation in
3 our country and it's taught me a lot
4 learning that. What would be unique
5 about somebody telling you that a
6 police officer is under stress? And
7 then we'll get to the reasons why he
8 was allegedly under stress. What
9 else did they say? I mean, I
10 understand they told you he was under
11 stress. That's all they said?

12 A. Yeah. And they are the union.
13 That's putting someone on
14 notification. And I can tell you
15 ---.

16 Q. No. They're bound by --- they
17 got a contract. They're taking his
18 dues money to represent him and
19 you're telling me that this guy, Mr.
20 --- I'm sorry, president of this
21 union, Pennsylvania State Trooper's
22 Association, that was Mr. Lazarro at
23 the time. Now, you said --- or Paul
24 McCommons. Who does Mr. McCommons
25 work for? I'm sure it wasn't Gary

1 Lightman called you up and told you
2 this. But you say Paul McCommons.
3 Do you know who Paul McCommons is?

4 A. He was the former president of
5 the PSTA, yes.

6 Q. So it was either one of those
7 two?

8 A. Yes.

9 Q. You don't know which one ---?

10 A. I think it was Lazarro.

11 Q. I do, too, sir. I think it is
12 because of the time frame. That's
13 the reason why I don't know any other
14 reason. Did he indicate that he had
15 any kind of personal interactions and
16 discussions with Mr. Ober?

17 A. I don't recall whether he did
18 or not, sir.

19 Q. Well, how many grievances did
20 Captain Ober file? By the way, he
21 didn't lose them all; did he?

22 A. I don't recall.

23 Q. Well, I assume that members of
24 the union lose grievances every year?

25 A. Well, there was a concern that

1 --- part of the discussions was that
2 he had put out around \$17,000 out of
3 his own pocket for legal costs and
4 that was certainly very stressful in
5 a family situation.

6 Q. Hey, it goes to show what my
7 clients go through all the time, my
8 police officer clients. He's getting
9 off easy, he just doesn't know it.
10 Well, let me ask you something, at
11 some point, didn't the Department, in
12 a most unprecedented way, appeal one
13 of those grievance decisions?

14 A. I don't recall, Mr. Bailey.

15 Q. Well, who told Joanna Reynolds
16 to appeal? Somebody had to give her
17 direction.

18 A. I don't have any recollection
19 of what you're talking about, sir, so
20 I can't answer that question, quite
21 honestly.

22 Q. Well, I'll dig it out before
23 this deposition is done. I can
24 assure you of that. Now, let's go
25 back to Mr. Lazarro. Mr. Lazarro ---

1 now, you said Mr. --- in fairness to
2 you, you said Mr. Lazarro or Paul
3 McCommons, I think we've pretty much
4 been able to sort it out and it's Mr.
5 Lazarro. Now, maybe this refreshes
6 your recollection. What did Mr.
7 Lazarro say to you about his union
8 member?

9 A. The union members have a lot
10 of stress and he felt a Departmental
11 responsibility to make sure that we
12 don't forget that he's under a lot of
13 stress, a compassion, if you will, a
14 caring.

15 Q. Love in his heart for his
16 member.

17 A. Let me tell you, obviously you
18 haven't dealt with PSTA. Yeah, they
19 would often put us on notice. You've
20 got a responsibility there and don't
21 forget it. That's their job, Mr.
22 Bailey.

23 Q. Did he indicate to you that he
24 was calling with Mr. Ober's
25 permission or did he talk to Gary

1 Lightman or anything like that?

2 A. No, not at all.

3 Q. Okay. So he, on his own, at
4 least to the extent of your
5 knowledge, it may not have been, you
6 don't know who else he talked to, but
7 he gets on the telephone, he calls
8 you up and --- now, were you talking
9 about Darrell Ober that day?

10 A. No. We got over lists of
11 issues. I mean, we would regularly
12 meet with the union and we would go
13 over a list of their concerns, if you
14 will. And you said that --- on his
15 own. Well, I don't know that he did
16 it on his own. He did it on behalf
17 of his member, whether he talked to
18 his member or not first, I don't
19 know.

20 Q. Do you applaud him for doing
21 that?

22 A. Yeah, actually, I do. I think
23 that's the union's role. I can't say
24 I applaud him. It's not usually
25 pleasant meetings with the folks, but

1 they're performing their role.

2 Q. Well, I grew up in a union
3 family and I remember before they had
4 any contracts --- I admit, I'm
5 pro-unionization, but I share with
6 you. I respect their advocacy, but
7 in this case the only thing we know
8 at this stage right now is Mr.
9 Lazarro calls you up and says that
10 Darrell is under a lot of stress.
11 Did he give you any details?

12 A. No. I mean, I recall that
13 there was a significant cash outlay
14 out of Captain Ober's pocket for
15 legal fees because he had been asking
16 for some support from --- it was
17 either the PSTA, the FOP or both and
18 they really felt up against it.

19 Q. And that hadn't happened in
20 your 30 ---how many, ten years at the
21 State Police, had you ever heard that
22 kind of problem before?

23 A. Sure. Well, not that exact
24 kind of problem, but I've heard about
25 members having problems. Member

1 assistant was one of the
2 organizational segments that came
3 under me when I was deputy of
4 administration.

5 Q. What if Mr. Lazarro said he
6 was going to pitch in and give
7 Darrell some money or get somebody to
8 come in and help Darrell, his member
9 that he loved and he was going to
10 help to help him out. Did he
11 indicate anything like that, Mr.
12 Lazarro; did he?

13 A. He wouldn't indicate to me.
14 That's internal PSTA stuff.

15 Q. Well, he told you he had to
16 put money out of --- talking about
17 the man's personal finances and his
18 personal situation and that he had
19 put money in.

20 A. He wasn't there to tell me
21 what he was going to do. He was
22 there to tell me I had a
23 responsibility to make sure Darrell
24 was okay. You know, they have a side
25 letter of agreement about treatment

1 and wellness of members and things.
2 That's what he was there to put me on
3 notice for.

4 Q. Hadn't Darrell, at that time,
5 now, your Counsel objects to these
6 words, one, but hadn't Darrell
7 benefited by a legal action which
8 resulted in the Pennsylvania State
9 Police backing off the transfer?

10 A. He benefited because the
11 Commissioner backed off the transfer.

12 Q. Out of --- I don't know. You
13 were aware when Mr. Lazarro called
14 you that Darrell had transferred ---
15 that Darrell had succeeded at that
16 effort; right, because that's what
17 led to the \$17,000 --- I mean, that's
18 what led to the spending of money?

19 A. I don't recall at what stage
20 that telephone call --- or what
21 sequence that took place in, Mr.
22 Bailey.

23 Q. Well, do you know when the
24 meeting with Mr. Dewire took place?

25 A. No.

1 Q. Do you know?

2 A. I don't recall, sir, no.

3 Q. And what actions did you take,
4 aside from after Mr. Lazarro called
5 you?

6 A. You know, to sum it up for
7 you, and to be quite candid actually,
8 I felt that the union had put me on
9 notice. When they put me on notice,
10 they put the Department on notice.
11 And hence, if we have an employee
12 that goes postal or something like
13 that, and that's not a good term to
14 use certainly, but the Department has
15 liability at that point. And because
16 of that, you know, because of what
17 --- for liability issues, I felt a
18 reason to address it and secondly
19 from a compassionate point of view.
20 I've had members seek help from them
21 on many, many, many occasions. I
22 mean, that was something that came
23 under me. It was something I
24 believed in. So that's why I had
25 Major Dewire in.

1 Q. Okay. What you knew at the
2 time was, that Mr. Lazarro told you
3 that Captain Ober was under stress.

4 A. Uh-huh (yes).

5 Q. And then he put out --- you
6 used the figure, \$17,000, who knows.
7 He put out a lot of money in legal
8 fees and was looking for financial
9 help. And Mr. Lazarro just made a
10 phone call. He didn't write you a
11 letter?

12 A. No. And he may have done it
13 in person. We may have been in my
14 office going over lists of issues
15 that he thought the Department should
16 make sure are covered.

17 Q. Did you generate any internal
18 memos, because I sure didn't get any
19 discovery from you? Did you ---?

20 A. No.

21 Q. Nothing?

22 A. No. Nor would I have.

23 Q. You wouldn't have done that?

24 A. No, sir.

25 Q. Well, I mean the Department's

1 on notice.

2 A. Right.

3 Q. Here's what I'm saying,
4 Colonel. It's real simple here. I
5 get a phone call from the head of ---
6 I don't just get a phone call from a
7 shop steward somewhere. I didn't get
8 a call from a bargaining agent or a
9 business agent, anything like that.
10 I get a call from the president of
11 the Pennsylvania State Trooper's
12 Association who wanted this fantastic
13 contract, politically active,
14 represent a fine group of people,
15 they call up and they put you on
16 notice, you don't even generate a
17 memo, not a note, nothing?

18 A. Not at that point, no, sir.

19 Q. Well, did you since then?

20 A. What's that, sir?

21 Q. Did you generate something
22 since then?

23 A. No, sir.

24 Q. But you felt the Department's
25 on notice?

1 A. Uh-huh (yes).

2 Q. So --- all right.

3 A. Well, I'm on notice.

4 Q. You're on notice, whatever.
5 You're on notice.

6 A. If I get sued, the Department
7 gets sued; correct, vice versa?

8 Q. The present Supreme Court, I
9 don't know. Between the 11th
10 Amendment, that had to be it.
11 Another revolt in the streets before
12 we get our rights back, who knows.
13 But the point is, you get a telephone
14 call from Mr. Lazarro and you don't
15 make any notes, anything like that.
16 Where did you call Mr. Walker for?

17 A. To ask him if he had had any
18 contact with Captain Ober that he
19 could tell me because there would be
20 the most contact. He couldn't tell
21 me if he had any because it's so
22 confidential.

23 Q. What would you call him for?
24 I mean, I understand all that.

25 A. To ask him that.

1 Q. To ask him if he had a contact
2 with Captain Ober to tell you, but
3 don't tell you what he said because
4 it's confidential. I don't
5 understand.

6 A. No. I asked him if there was
7 any dealings he had with Captain Ober
8 that he could tell me. And when you
9 said call him, you meant call him to
10 my office?

11 Q. Whatever, call him on the
12 phone or call him in your office. I
13 know he was in ---.

14 A. Probably in my office.

15 Q. Okay. And what did he tell
16 you?

17 A. To the best of my
18 recollection, he had no dealings with
19 Captain Ober that he could discuss
20 with me.

21 Q. What did you do ---?

22 A. Which I didn't infer as
23 meaning he did have contact with him.

24 Q. I understand what you're
25 trying to say.

1 A. All right.

2 Q. Now, what did you do next?

3 A. Well, as I recall, I had the
4 wire and Doctor Walker there. I had
5 directed my attention mostly to Major
6 Dewire.

7 Q. Sir, give me one second.

8 ATTORNEY BAILEY:

9 How much time do we got
10 left here?

11 VIDEOGRAPHER:

12 About 15 minutes.

13 ATTORNEY BAILEY:

14 About 15 minutes. I am
15 going to make a suggestion
16 that we continue for about
17 another five, we're going to
18 have to change tapes and stuff
19 anyway, and then take
20 hopefully a brief 35 to
21 45-minute time for lunch.

22 ATTORNEY CHRISTIE:

23 And how much do you
24 think you have left,
25 Counselor, after lunch?

1 ATTORNEY BAILEY:

2 Well, I'm going to be
3 honest with you. I did not
4 think that we were going to be
5 here at this time. It's just
6 that there's so much
7 information that's coming out.
8 It's really hard to say. I
9 would hope that I could finish
10 up in an additional hour, hour
11 and a half. Okay?

12 ATTORNEY CHRISTIE:

13 Fine.

14 BY ATTORNEY BAILEY:

15 Q. Sir, ---

16 A. Yes, sir.

17 Q. --- you had this meeting in
18 your office. Now sir, do you
19 remember when that meeting was?

20 A. No, sir, I do not.

21 Q. Okay. Don't you have any ---
22 I'm sorry. Didn't you generate any
23 notes, memos, anything like that,
24 about this meeting?

25 A. No. And there's a reason for

1 that.

2 Q. What's the reason?

3 A. Well, the reason was, if
4 Captain Dewire had any concern or
5 anything about --- Major Dewire, if
6 he had any concern about Captain
7 Ober, I would have put it in writing,
8 but he thought everything was fine,
9 so I didn't think there was any
10 reason to put anything in writing
11 when it was okay.

12 Q. Are you telling us that the
13 only thing involved in this entire
14 thing was a call came to you from Mr.
15 Lazarro? You've already, I think,
16 answered in detail everything you
17 remember about that. We don't have
18 to revisit that. You then had a
19 conversation with Mr. Walker and you
20 believe that conversation took place
21 in your office so apparently you
22 asked him to come up to your office;
23 is that fair to say?

24 A. Yeah.

25 Q. All right. And at the same

1 time, you asked Mr. Dewire to come to
2 your office?

3 A. Yes, sir.

4 Q. Do you remember if Mr. Walker
5 was there first and you talked with
6 him before Mr. Dewire got there or
7 maybe Mr. Dewire got there first. Do
8 you remember who got there?

9 A. I thought Doctor Walker was
10 there first.

11 Q. Okay. Do you remember if you
12 had a discussion with him before Mr.
13 Dewire came?

14 A. I think I did.

15 Q. Do you know whether Mr. Walker
16 made any notes or recordings or
17 anything like that?

18 A. I don't know, sir.

19 Q. Okay. Sir, if I told you, and
20 I want your attorneys here to take
21 issue on this if they want to, but if
22 I told you that I distinctly
23 recollect Mr. Dewire feeling that the
24 meeting --- that he had a feeling,
25 that he got an impression that the

1 meeting was to indicate that there
2 was an implied threat or a threat
3 there of some type, do you have
4 anything that you can help us with
5 that you recollect, and that's very
6 clearly in his deposition, about the
7 meeting that took place between you
8 and Mr. Dewire and Mr. Walker that
9 could have been interpreted as a ---
10 as some kind of a desire or artist
11 to carry a message or an implied
12 threat of some type of Captain Ober?
13 A. I can think of nothing, Mr.
14 Bailey, and it would really
15 disappoint me greatly in Major Dewire
16 if he took it that way, very much so,
17 sir.
18 Q. I would invite you to review
19 the deposition and I believe if we go
20 to trial in this matter, which I'm
21 hopeful we will, that you review that
22 deposition because I think that he
23 did make comments. I don't want to
24 represent them, you know,
25 specifically to you, but I did ask

1 him that question and what his
2 impression was, it's an impression.
3 He never said that he expressed that
4 to you or to anyone else, but that
5 was his impression. I would invite
6 you to review the deposition. It
7 might be something important for you
8 to do, because I don't want to
9 misstate it, but I recollect
10 something of that sort.

11 Now, after the meeting was
12 over, the meeting that Mr. Dewire and
13 Mr. Walker --- well, first of all,
14 can you tell us what questions you
15 asked, what you asked Mr. Dewire?

16 A. Well, first of all, let me say
17 that when you initially opened this
18 line of questioning you had
19 characterized it a fitness for duty.

20 Q. Okay.

21 A To me, that's not an accurate
22 term. I mean, a fitness for duty
23 requires a triggering event. There's
24 been no triggering event. And I mean
25 a triggering event in terms of his

1 official duty and in terms of his
2 official performance. There was
3 nothing like that. The union made
4 their concern known to me. And as
5 his supervisor, I asked Major Dewire,
6 how is the captain doing? Do you see
7 any changes in behavior? Is he okay?
8 Major Dewire told me, yes, he agreed.
9 He thought Captain Ober was under
10 stress. He said to me that maybe he
11 wasn't as talkative as he used to be,
12 maybe he was holding things a little
13 closer, but that he and Captain Ober
14 had a good rapport and thought that
15 they had a good relationship and that
16 if there was any problems he would
17 know about it. I asked Major Dewire,
18 please, keep a wire on it. And, you
19 know, if there's anything you see,
20 you know, if he seems under stress,
21 get in touch with me or get in touch
22 with Doctor Walker or, you know,
23 encourage the captain to go to the
24 member's assistance program. That
25 was the sum and substance of the

1 conversation, sir.

2 Q. Colonel, given what you have
3 just told us, I would agree with you
4 that I don't find anything in the
5 words that you've represented here
6 being of a threatening nature, that I
7 can tell. Do you have any idea if
8 you behaved or acted in a way or
9 anything else was said that you can
10 recollect that would have given Major
11 Dewire an impression, cause him to
12 walk away with an impression that
13 there was a --- that this had to do
14 with a threat of some type or a
15 message carrying thing of some type?

16 A. I can only tell you, Mr.
17 Bailey, that I've heard from a lot of
18 people that I have some strange body
19 language. And a lot of people read
20 me as being upset or displeased or a
21 lot of things. And maybe that was
22 the way he read my body language.
23 All I can --- and I can't say I can
24 assure you, but I can say from my
25 heart that there was not a threat

111

1 there. There was not only A, concern
2 and B, fulfillment of my obligation,
3 as I saw it.

4 Q. I think we're going to have
5 --- I'll tell you what, I have a
6 couple little questions, and one last
7 thing. Is this the normal procedure
8 you follow in this kind of situation?

9 A. I have done that a number of
10 times, sir.

11 Q. I tell you what, I have a
12 couple little questions, and it's not
13 going to hurt you to think about it.
14 I think because of the tape running
15 out, we ought to break maybe. How
16 are you doing on tape over there?

17 VIDEOGRAPHER:

18 Okay.

19 ATTORNEY BAILEY:

20 Why don't we break at
21 this point. Your clock --- I
22 know the camera clock is a
23 little bit slower there. Your
24 clock says 12:11. I'm going
25 to recommend that we reconvene

112

1 at 1:00, if no one objects.

2 ATTORNEY CHRISTIE:

3 Can we do so?

4 A. Whatever we need to do, Ms.
5 Christie.

6 ATTORNEY BAILEY:

7 Okay. I suggest that
8 we suspend at this time and
9 reconvene by your clock 1:00,
10 and whatever that thing says,
11 the camera. What's the camera
12 time on there?

13 VIDEOGRAPHER:

14 12:02.

15 ATTORNEY BAILEY:

16 Why don't you go ahead
17 and suspend it.

18 VIDEOGRAPHER:

19 Suspending video at
20 12:02.

21 OFF VIDEOTAPE

22 SHORT BREAK TAKEN

23 ON VIDEOTAPE

24 VIDEOGRAPHER:

25 Video operations are

113

1 now on, April 15th. The time
2 now is 1:10 p.m. camera time.

3 ATTORNEY BAILEY:

4 Okay. Thank you very
5 much. And we seem to be
6 chugging away here on this
7 audio. Okay.

8 BY ATTORNEY BAILEY:

9 Q. Colonel, let me just ask some
10 --- try to do a little bit of wrap-up
11 on the historic --- on the
12 Pennsylvania Historic Educational and
13 Memorial Centers, it's called. I did
14 a little internet access work over
15 the noon hour over on lunch break
16 here. The finance committee, are you
17 not the chairman of the finance
18 committee at least as of today?

19 A. As of today, yes, sir, after
20 my retirement.

21 Q. And I noticed that there's an
22 Earl Hoffman, Edward Cantalone, Kirk
23 Trate, Ernest Spittler. Are any of
24 them active Pennsylvania State Police
25 officers?

114

1 A. No, sir.

2 Q. How about Frank Tulli, Jr.,
3 Dean Hooper, Curt Zimmerman, James
4 Boyd, Rodney Manning?

5 A. Rodney Manning is, sir.

6 Q. Now, Dean Hooper is a friend
7 of your family; isn't he not?

8 A. No, sir. He's my neighbor,
9 and he's an acquaintance. I don't
10 know that I'd characterize him as a
11 friend, sir.

12 Q. I'm sorry.

13 A. He's my neighbor. I know him
14 personally and professionally. I
15 don't know if I'd apply the term
16 friend or not.

17 Q. Well, he does significant
18 contracting with the Pennsylvania
19 State Police; doesn't he?

20 A. I don't know that I'd
21 characterize it significant, but yes,
22 he has done contracts with the State
23 Police, sir.

24 Q. Well, your bid amount is
25 \$100,000?

115

1 A. I don't know, sir.

2 Q. Doesn't he have a number of
3 \$80,000, \$90,000 contracts, if you
4 know?

5 A. I don't know, sir.

6 Q. Do you work at Amp?

7 A. He did, yes.

8 Q. With your wife?

9 A. I don't believe they worked
10 together --- at the same time
11 together, sir, no.

12 Q. Sales committee, Frank
13 O'Rourke, Min Martin, Arthur Cronin,
14 Joseph Stabler, Joseph Kelly, Gary
15 Mysel, any of them Pennsylvania State
16 Policemen?

17 A. Currently, active, no, sir.

18 Q. Now, in the building
19 committee, David Bowser, Michael
20 Selgrath, David Davis, James Boyd and
21 Edward Cantalone appears again. Any
22 of them active members of the
23 Pennsylvania State Police, if you
24 know?

25 A. I do. I just --- I forget the

1 list of names. It was Michael
2 Selgrath, sir.

3 Q. Artifacts committee, Matthew
4 Hunt, chairman, Arthur Cronin, David
5 Points, Marc Infantino, Kirk Trate,
6 William Grooms, James Hazen. Any of
7 those members of the Pennsylvania
8 State Police?

9 A. David Points.

10 Q. And Simmers, PSP Liaison,
11 Captain Michael, I assume they are?

12 A. He would not be a member of
13 any of the committees. He's simply a
14 liaison between the Department and
15 the museum.

16 Q. All right. That's the --- I'm
17 sorry?

18 A. I was just going to say that
19 before we went on break, we were
20 discussing that one issue that had to
21 deal with my meeting with Major
22 Dewire, and I just wanted to close
23 the loop on that with you.

24 Q. Go ahead.

25 A. One of your final statements

117

1 was to me, as I recall, was something
2 about and did I have any further
3 discussions with Major Dewire about
4 Captain Ober. And I don't recall if
5 you had put that in the terms of
6 stress or not stress. And I said no,
7 that I didn't. I do recall having
8 one subsequent conversation with
9 Major Dewire about Captain Ober, but
10 it wasn't on the stress issue, sir.

11 Q. Matter of fact, I don't think
12 --- you've signed on February 27th,
13 2001 a very, very highly
14 complimentary performance evaluation.
15 You signed off on it for Captain
16 Ober; didn't you?

17 A. I don't recall doing it, but I
18 would think that I would have done
19 something like that.

20 Q. Well, don't you review
21 performance ---?

22 A. Yes, sir. I'm just saying I
23 don't recall doing it. I had a lot
24 of performance reviews that I signed
25 off at.

1 Q. I've had --- you know, I've
2 done it in the past. I've always
3 took them very seriously. And I know
4 --- that's not a reflection on you.
5 A lot of people take them as
6 boilerplate, but I used to take them
7 very seriously and study them. Do
8 you --- what was your methodology?
9 Did you try when you had the
10 opportunity to look at them and
11 consider them?

12 A. I read every one of them, and
13 decided whether I concurred with the
14 Bureau director's evaluation or not.

15 Q. If I told you that my best
16 recollection is --- my best
17 recollection now was that the
18 interview that you had with Mr.
19 Dewire and Mr. Walker occurred after
20 the amended complaint in this case
21 was filed, does that refresh your
22 recollection at all as to when that
23 discussion took place?

24 A. No, sir, it does not.

25 Q. But the one thing that you are

119

1 fairly certain of is that Mr. --- and
2 I've been saying it Lazario. It's
3 not Lazario; is it, it's Lazarro?

4 A. Lazarro.

5 Q. Lazarro?

6 A. Yes.

7 Q. And Mr. Lazarro --- and I
8 would like to make a request that the
9 record be corrected where I've
10 mispronounced his name, if Counsel
11 does not object.

12 ATTORNEY CHRISTIE:

13 No objection.

14 ATTORNEY BAILEY:

15 Thank you.

16 BY ATTORNEY BAILEY:

17 Q. And Mr. Lazarro called you.
18 But he called you, Colonel, you
19 didn't call him; right, about ---?

20 A. And it may not have been a
21 phone call, as I said before, Mr.
22 Bailey. It may have been a face-to-
23 face meeting in his office. But that
24 is correct, I did not initiate the
25 issue.

1 Q. And I remembered you saying
2 that it was initiated by Mr. Lazarro;
3 correct?

4 A. Yes, sir.

5 Q. Now, the issue of use of the
6 names, just so the record is clear,
7 on the --- I did an internet pull-up.
8 And I found that the end of the
9 Pennsylvania State Police Historical,
10 Educational and Memorial Center ---
11 and by the way, from the internet, I
12 got to it by starting by just
13 punching in Pennsylvania State
14 Police. I wanted to see where it
15 went. It says contributions to the
16 Pennsylvania State Police Center may
17 be made payable to, semicolon, PSP-
18 HEMC, and mailed to Pennsylvania
19 State Police Historical, Educational
20 and Memorial Center, 1746 East
21 Chocolate Avenue, Hershey, PA 17033-
22 1181. Are there any facts known to
23 you that would indicate that that
24 information may not be accurate as it
25 appears on the internet?

1 A. I have not looked on the
2 internet. But the information you
3 gave me, as far as the name and the
4 address sounds accurate.

5 Q. I also have a board of
6 directors. I just want to rapidly go
7 through this. It's not very long.
8 As of April 2002, board president,
9 Major William J. Regan. Now, he's
10 retired, you told me?

11 A. Yes, sir.

12 Q. How about Matthew --- Major
13 Matthew Hunt, is he retired?

14 A. Yes, sir.

15 Q. How about Mr. David Bowser,
16 Sr.?

17 A. Not a member of the Department
18 at any time.

19 Q. Mr. Earl V. Hoffman, Jr.?

20 A. Never a member of the
21 Department.

22 Q. Captain Kirk R. Trate?

23 A. Retired.

24 Q. Captain Frank O'Rourke?

25 A. Retired.

1 Q. Corporal James Boyd?

2 A. Retired.

3 Q. Mr. Edward A. Cantalone was
4 not a member; right?

5 A. Was a member for a couple of
6 years, many, many years ago.

7 Q. Lieutenant Colonel Thomas
8 Coury?

9 A. Retired.

10 Q. Sergeant Joseph Stabler?

11 A. Retired.

12 Q. Dean Hooper, we've been over,
13 Cronin, Spittler has been mentioned.
14 The Honorable Lawrence Clark?

15 A. Retired.

16 Q. The Honorable Frank Tulli,
17 Jr., Pennsylvania House of
18 Representatives, was he a former
19 member?

20 A. Never, no, sir.

21 Q. And James J. Manganello?

22 A. Never a member, sir.

23 ATTORNEY BAILEY:

24 Now, Counsel, if you
25 want to put those in, they're

123

1 here. Do you want to look at
2 this stuff?

3 ATTORNEY CHRISTIE:

4 What stuff?

5 ATTORNEY BAILEY:

6 These committee --- I
7 mean, it's off the internet.
8 I don't ---.

9 ATTORNEY CHRISTIE:

10 No. I have no need to,
11 Counsel.

12 ATTORNEY BAILEY:

13 Okay.

14 BY ATTORNEY BAILEY:

15 Q. Do you know when the complaint
16 in this case was filed?

17 A. In this lawsuit?

18 Q. Yes.

19 A. No, sir, I don't.

20 Q. If I told you I believe it was
21 on or about January 16th, 2001, would
22 that be roughly consistent with your
23 knowledge?

24 A. Yeah. I don't even have a
25 time frame on it, Mr. Bailey. I

1 don't know, sir.

2 Q. Well, the employee performance
3 review that I'm looking at here,
4 which is Captain Ober's, runs from
5 March 3, 2000 to --- I'm sorry, from
6 March 2000 to March 2001. If you
7 want to look at it, that's fine. But
8 do you have a recollection of at
9 least looking at or reviewing or
10 becoming aware of a performance
11 evaluation I suppose would have been
12 done by Major Dewire?

13 A. Major Dewire would have done
14 it as his direct supervisor. And the
15 next step in the reviewing process
16 after Major Dewire reviewed it would
17 be it would come to me for my review.

18 Q. There's a date on here of
19 February 27th, 2001, with you signing
20 off on the same day, February 27th,
21 2001, saying you agree with the
22 comments --- strike that. I'm sorry.
23 That's correct.

24 That you agree with the
25 comments, with this rating. Do you

1 have any reason to believe that
2 that's not accurate?

3 A. No, sir.

4 Q. Now, you got a call --- you
5 have a recollection of receiving ---
6 does this help at all that you
7 received a call from Mr. Lazarro
8 prior to the 27th of February, 2001?

9 A. No. Because there would be no
10 connection between that document and
11 the call from Lazarro.

12 Q. And so you would separate
13 those things out completely and that
14 sort of thing; right?

15 A. Absolutely, sir.

16 Q. Well, you're familiar --- are
17 you familiar with any of the comments
18 in this performance evaluation?

19 A. No, sir.

20 Q. Did you consider this
21 performance evaluation when you
22 called Mr. Dewire to talk about Mr.
23 Ober?

24 A. No. Because I ---.

25 ATTORNEY CHRISTIE:

1 Excuse me. Which
2 conversation are we talking
3 about, the stress conversation
4 or the one other conversation
5 with Major Dewire that was not
6 about stress?

7 ATTORNEY BAILEY:

8 Well, obviously we
9 don't know what it was about,
10 so we'd be talking about the
11 one where Mr. Lazarro either
12 came personally or called for
13 the purpose of discussing
14 stress, that one.

15 A. Would you restate your
16 question, sir? I'm just unclear.

17 BY ATTORNEY BAILEY:

18 Q. Yes. Did you look at any of
19 Captain Ober's performance
20 evaluations when you contacted Mr.
21 Dewire to discuss the issue of
22 stress, which had extensively been
23 relayed to you by Mr. Lazarro?

24 A. No, sir, I did not. And the
25 reason for that is, as I had told you

1 earlier, I told you that the term
2 fitness for duty was not applicable
3 because that has to do with
4 performance and everything. I did
5 not view that as a Department
6 performance-type issue. I dealt it
7 as more of a personal private-type
8 issue.

9 Q. Well, I understand it's ---
10 but I mean, it would have been
11 something that would have affected
12 his work habits; wouldn't it?

13 A. It's what I asked Major Dewire
14 about. It may or may not have. I
15 don't know.

16 Q. Can I ask why you wouldn't
17 just call Dewire up? I'm not
18 questioning your methodology, and you
19 can certainly explain it. But why
20 not call Mr. Dewire and simply say,
21 hey, does Ober have any problems or
22 ---?

23 A. It's kind of sensitive. I
24 don't think you do some of that stuff
25 over the phone, sir.

1 Q. I agree with that.

2 A. And it's something you don't
3 repeat outside of those doors.

4 ATTORNEY BAILEY:

5 Well, I want to thank
6 Mr. Ober, who kindly went to
7 retrieve something I forgot.
8 I had one note on there, and I
9 couldn't remember in my mind
10 what it was on this lousy
11 little scratch sheet of mine
12 here. But I did find it. And
13 I just remembered that I had
14 placed it there, and I
15 couldn't remember what it was.
16 Here I have it.

17 BY ATTORNEY BAILEY:

18 Q. Do you have a recollection at
19 some point of taking a Mustang, which
20 had been taken possession of by the
21 Pennsylvania State Police, prior to
22 forfeiture, running around and using
23 it? Did you ever do that?

24 A. I used it, yes, sir.

25 Q. All right. Does that violate

1 any Pennsylvania State Police
2 regulations at the time?

3 A. No, sir.

4 Q. It doesn't?

5 A. No, sir.

6 Q. It was not Pennsylvania State
7 Police property, it was not
8 government property. An action in
9 forfeiture runs against an in rem
10 action, in other words, it's against
11 a thing; right? When you do an
12 action in --- are you familiar with
13 an forfeiture action?

14 A. No, sir.

15 Q. Well, is it fair to say that
16 when the government does a
17 forfeiture, it goes out and goes to
18 acquire a piece of property, it sues
19 the property, it goes after the
20 property; right? You know that?

21 A. Yes, sir.

22 Q. Why would you take a piece of
23 property that did not belong to you
24 or to the Pennsylvania State Police
25 and run around in it or use it?

1 A. A, I certainly don't agree
2 with your term, run around with it.
3 It was to show the commissioner and
4 to get some photos taken with the
5 vehicle. And B, that car had been
6 turned over to the Pennsylvania State
7 Police. And we still have that
8 vehicle, as well as another Mustang.

9 Q. So eventually, it was subject
10 to a forfeiture proceeding?

11 A. It was subject to forfeiture
12 before that, sir. The State Police
13 never took possession of that car, to
14 my knowledge, until all the
15 forfeiture proceedings had been done,
16 and that vehicle was released to the
17 Pennsylvania State Police under
18 agreement, I would imagine from the
19 attorney general's office, but that's
20 legalese, and a question for the
21 Counsel here at some point.

22 Q. Well, it's not legalese if the
23 vehicle was impounded and supposed to
24 be kept somewhere and ---?

25 A. That was not the case, Mr.

1 Bailey.

2 Q. Well, where was it --- who was
3 keeping it?

4 A. When it was impounded?

5 Q. Sure. If you ---?

6 A. Well, the State Police may
7 have had it during the time it was
8 impounded. I don't even know who
9 seized that vehicle. Perhaps that
10 vehicle wasn't even seized by the
11 Pennsylvania State Police. Maybe it
12 was seized by DEA or some DA's
13 office, but the final disposition of
14 that vehicle was given to the State
15 Police to use for community services
16 purposes.

17 Q. It was?

18 A. Yes, sir.

19 Q. Who made that decision?

20 A. That it was going to be used
21 for community services purposes?

22 Q. Yes.

23 A. The commissioner. I recall
24 going to him and asking him to use
25 that vehicle for community services.

1 Q. Have the Pennsylvania State
2 Police ever provided information to
3 any legislative committees about the
4 reasons and purposes of forfeiture
5 and responded to questions about the
6 abuse of forfeiture proceedings in
7 our country?

8 A. I don't know, sir.

9 Q. Where is that car today?

10 A. It's at the State Police
11 Academy.

12 Q. And the reason I got in ---
13 the reason I asked these questions is
14 it's my understanding that an
15 acquisition was made for some type of
16 display vehicle. I started nosing
17 around to try to find out what this
18 display vehicle used by the
19 Pennsylvania State Police --- some
20 purchase was made for \$20,000. Maybe
21 I'm mistaken, but did you not okay
22 that?

23 A. Purchase of what, sir?

24 Q. Of a model of a car to be used
25 in community relations, little model

1 cars, cast iron cars. Did you ever
2 see these little cast iron models of
3 cars?

4 A. Yes, sir.

5 Q. Did you --- and I may be in
6 error here, Colonel, and off on a
7 tangent without even realizing it.
8 Did you ever play a role in
9 requesting or signing a contract or
10 having a contract drawn up where the
11 State Police would take \$20,000 or so
12 of taxpayer money to purchase a model
13 --- a cast iron model of a car for
14 giveaways, it costs about \$4 or \$5,
15 if I remember correctly?

16 A. No, sir. The Department never
17 entered into any project like that.
18 The museum had a project. That was
19 not had --- didn't have anything to
20 do with the State Police.

21 Q. Okay. Let me go back then.
22 Was it the museum then that did this?

23 A. Yes, sir.

24 Q. And now, the museum that
25 you're talking is the Pennsylvania

1 A. Somebody from the museum
2 project probably went up and took
3 pictures of the car to use to make
4 the model. But ---.

5 Q. I don't mean that. I
6 understand that. I don't --- I mean,
7 I would be with you. I'm sure that's
8 no big deal. Now, I'm talking about
9 the purchase or acquisition of the
10 model cars. Do you know if anybody
11 ---?

12 A. No, sir, not that I'm aware
13 of.

14 Q. I may be mistaken ---.

15 A. I could tell you that at one
16 point, the Department considered
17 purchasing some of those models from
18 the museum to use for community
19 services give-aways, but that did not
20 occur because once we looked at it,
21 that would have been a conflict
22 because you should go out on --- you
23 shouldn't sole source that. That
24 should go out for competitive bid, et
25 cetera, et cetera. And that was the

1 end of it. So those --- the
2 Department, to my knowledge, never
3 even bought any of those vehicles to
4 use in community services as give-
5 aways.

6 Q. What I'm looking at, Colonel,
7 so you know where I'm coming from
8 with this line of questioning when I
9 come up these things, it may seem ---
10 you know, it may not seem related, is
11 I'm trying to look for the standards
12 in cases where you know about a fact
13 situation appertaining to the
14 Pennsylvania State Police Museum or
15 appertaining to the acquisition of
16 memorabilia that --- you know, what
17 standards you set for investigating
18 someone or anyone. My understanding
19 is that your view of what came to you
20 --- or your position, that what you
21 came to you about Darrell Ober
22 allegedly going out and acquiring or
23 trying to acquire memorabilia was
24 looked at simply in terms of somebody
25 communicated some substance of a

1 it. I want to ask you about it. It
2 was something you did on training
3 request. Oh, yes. Let me see if I
4 can go back through this poorly
5 equipped brain of mine and come up
6 with it. Okay. I'm thinking back in
7 terms of some previous questions we
8 had to a date, time, group sometime
9 in October, I believe, of 1999. And
10 if I remember correctly, on or about
11 October 19, you had some testimony or
12 documentary evidence that indicates
13 that on or about October 19th, 1999,
14 Captain Darrell G. Ober makes a
15 request to go to a one-week training.
16 If I am not mistaken, he is told at
17 some point by you in a memo that you
18 drafted through --- I forget who the
19 individual was who had drafted it,
20 Mr. Einsel is the individual, and
21 that he was late in time. Do you
22 remember that incident?

23 A. No, sir, I don't.

24 Q. Well, do you have a
25 recollection on November 1 of 1999,

1 signing a memo to Captain Ober
2 telling him that his request for
3 specialized training at Northwestern
4 University Traffic Institute was
5 received after the October 22nd
6 deadline, and that because his memo
7 wasn't received by you until October
8 28th, 1999 ---. Before you go on,
9 let me tell you what this was about,
10 so I can bring you and Counsel up to
11 snuff, give you a little bit of an
12 offer here. When I was looking
13 through these documents that were
14 offered to us as a result of our
15 document request, I found that a
16 little thing with a little squib in
17 the corner of it had to do with this
18 matter here, where a Becky Brown
19 signs this thing about the memo being
20 --- coming in from --- the request
21 coming in from Captain Ober with a
22 date of October 20. Now, when your
23 memo comes back to Captain Ober
24 denying him, he's told that his memo
25 was untimely because it didn't arrive

1 until October 29 --- or I'm sorry,
2 sir, October 28th of 1999. Now, we
3 know it was in the appropriate office
4 on October 20, the documents show
5 that. Do you have any recollection
6 of sitting on something for a week to
7 either harm him or to skewer it a
8 little bit to hurt him or anything
9 like that? Did you do anything like
10 that?

11 A. No, sir. And the information
12 you're providing to me now about his
13 training and everything is the first
14 I've heard of anything about any
15 training or --- that I can recall
16 about Captain Ober.

17 ATTORNEY CHRISTIE:

18 Counsel, can we just
19 --- excuse me, clarify it.
20 When you say Becky Brown, it's
21 my understanding works here,
22 and you say that would be in
23 the appropriate office, you
24 mean Becky Brown. And when
25 you say his memo, do you mean

1 Colonel Coury's memo, because
2 I think you also indicated
3 that it was authored by and
4 initialed by Major Einsel?
5 Just to clarify, although I
6 think the witness already
7 answered the question, but
8 because the question contains
9 some confusing recitations in
10 it, I'm just looking for
11 clarification.

12 ATTORNEY BAILEY:

13 Sure. To begin with,
14 my recollection --- we went
15 over these documents. They
16 were exhibits. And questions
17 were raised about them in a
18 number of prior depositions.
19 And that was the document
20 where there was the little
21 handwritten portion. And I
22 had raised objections that it
23 was not included in the file,
24 that somebody had purged the
25 file of it, Lord knows who,

1 some forest sprite from
2 somewhere, but it had been ---
3 it was gone. It was out of
4 there. And so we asked about
5 that because it raised a very
6 cogent issue, you know, issues
7 having to do with adverse
8 employment actions. When I
9 researched this issue --- and
10 let me confer with my client
11 for a minute to make sure my
12 facts are right, because you
13 know one of the difficulties
14 with our system is that we
15 have to translate everything
16 through us lawyers. But the
17 fact is, as I recollect it,
18 it's common parlance, Darrell
19 goes in and makes a timely
20 request for training. My
21 understanding and what I've
22 learned over the years in
23 working on Pennsylvania State
24 Police cases, normally this
25 kind of thing would be

1 approved, it's a value to the
2 Pennsylvania State Police, a
3 value to him, a value to
4 everybody concerned. It's
5 timely received on October
6 20th.

7 ATTORNEY CHRISTIE:

8 But where is it timely
9 received? When you're saying
10 it's in the appropriate place
11 as Ms. Brown's --- whatever,
12 Ms. --- whatever you
13 researched, that she indicates
14 by that notation it's in the
15 right place, which I guess is
16 her place, on 10/20. To my
17 understanding, Ms. Brown is in
18 text services at that point,
19 not in Colonel Coury's office
20 or in Major Einsel, acting for
21 Colonel Coury at that time
22 offices.

23 ATTORNEY BAILEY:

24 All right. Her note
25 indicates it was forwarded to

1 personnel on 10/20.

2 ATTORNEY CHRISTIE:

3 To personnel on 10/20?

4 ATTORNEY BAILEY:

5 Yes.

6 ATTORNEY CHRISTIE:

7 Okay. Just for

8 clarity.

9 ATTORNEY BAILEY:

10 Well, it has to be
11 approved by Colonel Coury.
12 That's the only thing we know.
13 And we know that he's told
14 --- that Darrell is told that
15 --- you know, we had file
16 notes, which was taken --- as
17 I said, somehow it's missing
18 from the files that we were
19 given.

20 ATTORNEY CHRISTIE:

21 Although the response
22 to that memo was in the file,
23 which referenced that memo.

24 ATTORNEY BAILEY:

25 Well, the response

1 would have indicated that he
2 did not ---.

3 ATTORNEY CHRISTIE:

4 So apparently the elf
5 didn't grab both of them.
6 They just took the memo, but
7 not the response to that.

8 ATTORNEY BAILEY:

9 Well, the elf made a
10 number of errors in this case,
11 and very, very significant
12 ones, we think. And that's
13 just one of them because it's
14 not the only case we have with
15 things being missed from the
16 file. But whatever the forest
17 sprites did, schmutzig
18 Schweinhunds that they be, the
19 point is that they take this
20 stuff from out of the, you
21 know, files, wherever they
22 are.

23 ATTORNEY CHRISTIE:

24 Do we have a question
25 on the table, by the way,

1 Counsel, before we engage in
2 this argument?

3 ATTORNEY BAILEY:

4 Yes, we do. I'm just
5 giving you a little background
6 information as to the
7 deceiving little sneak,
8 whoever it might be. Well,
9 here's what our indication is.
10 Darrell Ober goes and he sends
11 in a timely fashion a request.
12 He sends this request. And
13 anyway, it's in timely. I
14 think the deadline he's
15 supposed to have it in by is
16 the 22nd. He files it by the
17 19th. It goes to personnel on
18 the 20th, it's forwarded.
19 Okay. Personnel receives it,
20 they send it out.

21 ATTORNEY CHRISTIE:

22 I thought you just said
23 that the text services
24 forwarded it to personnel on
25 the 20th. And again, I'm just

1 recalling what you said. I
2 don't have those documents in
3 front of me, nor does the
4 witness.

5 ATTORNEY BAILEY:

6 Well, anyway, all we
7 know is it took eight days to
8 get from personnel to Colonel
9 Coury. And it would have been
10 --- you know, he could have
11 gone to the school, anyway.
12 But that's --- you know, he
13 was disallowed. And from what
14 I can find --- and again, just
15 doing my little checking
16 around with folks, these kind
17 of things rarely --- I mean,
18 even if somehow laying in a
19 corner somewhere hidden or
20 forgotten or lost for eight
21 days, that these kind of
22 things aren't turned down
23 unless it's impossible to do
24 them. In this case, a
25 technical date was adhered to.

1 And the information, we know
2 it got there in time. My
3 question was simply going to
4 be, the documents clearly
5 establish what happened. All
6 I was going to ask the Colonel
7 was if he remembers it. And
8 if he did, whether it was ever
9 investigated. I don't expect
10 him to say he put it in his
11 pocket for eight days, if
12 that's what you're asking me.

13 ATTORNEY CHRISTIE:

14 Okay. If he remembers
15 what, though, getting the memo
16 ---?

17 ATTORNEY BAILEY:

18 If he remembers
19 anything about it, he would
20 know --- you know, in working
21 on this case, it ever came up
22 before him, you know, if he's
23 reviewed documents, has any
24 awareness of it, that sort of
25 thing.

1 A. I do not have any recall of
2 Captain Ober putting in for training.
3 The only thing I would say to you is
4 you had said that typically these
5 types of training are approved. I
6 don't know that that's the case
7 because I don't even know what type
8 of training we're talking about here.
9 Not all training is typically
10 reviewed --- or approved, rather.

11 BY ATTORNEY BAILEY:

12 Q. I didn't mean that. I didn't
13 mean that all training --- I meant
14 that in situations where schools or
15 trainings don't start, and there's
16 enough time to do them, that if
17 certainly when there's a reasonable
18 explanation that something either was
19 lost or waylaid through no fault of
20 the requestor, whether or not that
21 serves as the basis for getting rid
22 of it, you know, that's all. And I
23 think you've pretty much answered it.
24 Colonel, I want to ask you just a few
25 questions about an internal affairs

150

1 division meeting dated October 12,
2 1999. Do you have any recollection
3 of Major Conley either denying
4 Captain Ober an opportunity to attend
5 that meeting or were you aware of it?

6 A. I don't recall that at all,
7 sir.

8 Q. Do you have any recollection
9 of Colonel Conley, who probably would
10 have been a Major at that time, I'm
11 not sure, October 12 of '99, he would
12 have been a Major, I guess, at that
13 time. Do you have a recollection of
14 Major Conley in October of 1999
15 discussing Captain Ober or any IAD
16 matter at all, any kind of meeting
17 with Captain Brown, incidentally, as
18 a go-between or somebody that was to
19 deliver information?

20 A. I don't recall that, sir.

21 Q. Now, do you know a Leonard
22 Washington?

23 A. Yes, sir.

24 Q. Did you ever have any
25 discussions with Leonard Washington

1 about Captain Ober and PEMA?

2 A. I don't recall any, sir.

3 Q. Did you ever have any
4 discussions with Captain Skurcis
5 (phonetic) --- I guess he's now a
6 Major?

7 A. No. He's still a Captain, as
8 far as I know.

9 Q. Still a Captain, okay. Did
10 you ever have any discussions with
11 Captain Skurcis about Darrell Ober?

12 A. In relationship to anything
13 specific?

14 Q. In relation to PEMA.

15 A. Not that I can recall because
16 PEMA didn't fall under me. So it's
17 not something that --- Captain Ober
18 was under my command, PEMA was not.
19 It was operation stuff, so ---.

20 Q. But for somebody to be
21 detached to or to be available for
22 that duty would require your
23 permission; wouldn't it?

24 A. No, sir. It would require the
25 Commissioner's permission. Well, it

1 depends on the nature. I mean, if
2 one of the other deputates wanted a
3 member, usually that would go through
4 the Commissioner. In other words, if
5 Deputy staff wanted Captain Ober
6 assigned to something, it would go to
7 the Commissioner, and the
8 Commissioner would say to me, you
9 know, you should be released, so on
10 and so forth. So it depends on the
11 nature of it. But for PEMA, PEMA
12 didn't come under me.

13 Q. Here's my question. It's a
14 little wee bit different. Do you
15 have a recollection of anybody,
16 whether it was the Commissioner,
17 whether it was Mr. Dewire, whether it
18 was Mr. Washington, Koscelnak, Mr.
19 Koscelnak, anybody making a request
20 or an inquiry of you regarding
21 Darrell Ober and assignment to PEMA?

22 A. No, sir. I do not recall
23 anything to that nature.

24 Q. But you see Colonel Waite, you
25 explain things. And maybe you can

1 help me clarify it in my mind,
2 because I'm a little bit confused,
3 just a little bit confused. If
4 somebody wanted --- let's say Darrell
5 Ober wants to serve on PEMA, and he's
6 out there working for Major Dewire?

7 A. Right.

8 Q. And let's say Major Dewire is
9 in favor of it, and let's say Mr.
10 Washington is in favor of it. Okay?

11 A. Yes.

12 Q. The route that that request
13 would take is actually --- it would
14 actually go to the apex, to the
15 Commissioner before it came back to
16 you, from what you're telling us or
17 would it go to you first before it
18 got to the Commissioner?

19 A. If Captain Ober put in a
20 request to serve, let's say, on PEMA,
21 it would go through Major Washington,
22 it would come to me, and then it
23 would either go over to Colonel
24 Westcott or Colonel --- well, I ended
25 up taking over operations, so it

1 would have been --- it would go to
2 the deputy of operations or to the
3 Commissioner. It could go either
4 place. But I couldn't approve it. I
5 can't approve sending somebody to
6 PEMA when PEMA is not under me. I
7 mean, I would have to go over to
8 deputy of operations and say ---.

9 Q. I understand.

10 A. Okay.

11 Q. But you would make an initial
12 decision --- I mean, let's say if
13 ---?

14 A. I would endorse it.

15 Q. That's what I mean. Let's say
16 this happens. Let's go through the
17 scenario that you painted. Ober says
18 I want to serve with PEMA. Okay. So
19 he checks with his Major, fine, good.
20 I'll recommend you or appoint you or
21 whatever. Okay. And that's Major
22 Dewire, let's say, or let's say he's
23 politicking for the position or
24 asking about it, however it happens.
25 Let's just say we're at this stage.

1 Mr. Washington plays a role here, I
2 guess, because he is part of the
3 administration of PEMA, as I
4 understand it; right?

5 A. Yes. Washington wasn't under
6 me at that time.

7 Q. No, sir.

8 A. Okay.

9 Q. But you're around, checking,
10 you need somebody, I want to do this,
11 and --- you know, one of the logical
12 things you do, do you have a need,
13 and hey, if so, could I do that. For
14 example, we heard from Captain
15 Skurcis about how he didn't want to
16 do it. Okay. We also heard from
17 Captain Ober that he wanted to do it.
18 So let's say we're at this stage, we
19 got Captain Ober wanting to do it,
20 making his desires and wishes known,
21 we got Mr. Washington, who is in
22 favor, we know that for a fact.

23 A. Yes, sir.

24 Q. And we have either Mr. Dewire
25 or, I believe, Mr. Koscelnak, I'm not

1 sure --- yeah, Major Dewire. And
2 he's fine, it's okay with him. You
3 seem to be testifying here today that
4 based on your recollection as you sit
5 here today, this thing never meets
6 --- never reached you?

7 A. October of '99? Is that the
8 time frame I believe you stated?

9 Q. I may be --- let me check on
10 when you became director of office.

11 A. July of 2000.

12 Q. That's when this occurred.
13 I'm trying to figure out when it fits
14 in the box. My understanding, sir,
15 is that this issue arises as a
16 request by Captain Ober sometime
17 around July of 2000. And I think Mr.
18 Westcott is either leaving or about
19 to leave around that time?

20 A. He left in July of 2000.

21 Q. Usually you do this transition
22 thing. I mean, I know the way you
23 fellows do it, you know, you sit down
24 and hey, what's hanging in the fire,
25 and you come in --- did you have one

1 of those hanging fire meetings with
2 Mr. Westcott?

3 A. Yes.

4 Q. Do you have a recollection of
5 Darrell Ober being mentioned during
6 that discussion?

7 A. No. I can recall discussion,
8 and it involved Colonel Westcott, and
9 I recall Darrell's name, and I recall
10 PEMA. But I don't recall what or why
11 or anything like that because it just
12 didn't come under me. It wasn't ---.

13 Q. No.

14 A. It didn't involve me, sir.

15 Q. Well, that's what I'm trying
16 to pin down here. And I know you're
17 not being evasive, it's just I'm not
18 being clear because I don't know the
19 system well enough. But it would
20 involve you in the sense that you
21 would have to approve it because you
22 were technically his boss?

23 A. Yes. If somebody came and
24 asked me for me.

25 Q. I understand that. And that's

1 what I'm trying to decipher here.

2 I'm trying to find out what occurred
3 here because we already have quite a
4 bit of background on this. The
5 bottom line is you remember some
6 discussion, but you don't remember
7 the details of the discussion with
8 then Lieutenant Westcott about it?

9 A. Well, I could tell you that no
10 one ever came to me and asked me for
11 Captain Ober and for PEMA.

12 Q. Now, to straighten out the
13 procedural line is that you're
14 presuming if someone had come to you
15 and asked you, you would have made
16 whatever the appropriate decision
17 would have been at the time?

18 A. Yes.

19 Q. You would have made that
20 decision. Your best recollection is
21 that no one did come to you and ask?

22 A. That's correct, sir.

23 Q. That you can remember?

24 A. I do not recall anyone coming
25 to me and asking me for my opinion or

1 asking for Captain Ober.

2 Q. Did you have any --- a
3 recollection of any kind of meetings
4 or discussions at all where PEMA and
5 Ober were brought up either with the
6 Commissioner or in his presence?

7 A. No, sir, I don't.

8 Q. Okay.

9 A. You know, if I could clarify
10 that chain of command issue because
11 ---.

12 Q. Sure.

13 A. We had me injected in this
14 whole thing and everything, so let's
15 leave the names out and just go with
16 positions.

17 Q. All right.

18 A. If Captain Ober was under
19 Major Dewire's command, that would
20 have been an operation. So the
21 channel would have been Captain Ober
22 to director of Liquor Control
23 Enforcement, to the Deputy
24 Commissioner of Operations. And ---.

25 Q. Which was you at that time?

1 A. No, it would have been ---.

2 Q. Mr. Westcott?

3 A. It depends on the time and
4 everything, that's right.

5 Q. If it was March of 2000, it
6 would have been Mr. Westcott?

7 A. Right.

8 Q. If it was September of 2000,
9 it would have been you?

10 A. It would have been me.

11 Q. And this thing seems to be on
12 the cusp, we don't know where it is?

13 A. Yes.

14 Q. Remember when you and I had
15 been talking about the issues
16 surrounding Mr. Lazarro's call to you
17 and Captain Ober allegedly being
18 stressed or something of that sort?

19 A. Yes, sir.

20 Q. And you had commented about
21 grievances, that he had filed some
22 grievances?

23 A. Yes.

24 Q. And you more or less said it
25 just like that, as I recollect he had

161

1 filed some grievances?

2 A. Yes.

3 Q. Do you have a recollection of
4 how many grievances he filed?

5 A. No, sir.

6 Q. Do you have a ---?

7 A. I'm sorry. It may have, in
8 fact, been only one. I don't recall.

9 Q. Do you have a recollection of
10 whether or not these grievances
11 involved significant amounts of money
12 at the time?

13 A. I don't recall.

14 Q. Do you remember one concerning
15 a reimbursement request for a hotel
16 room with some FBI agents?

17 A. Yes, I do.

18 Q. Tell me what you remember
19 about that.

20 A. I can recall that Captain Ober
21 had been on an assignment, where he
22 took --- on a day off, went to
23 Western Pennsylvania, rented a motel
24 room on a day off, and rented a motel
25 room. And then subsequently, some

1 time after the date that this
2 transpired, meaning months and months
3 and months, retroactively went back
4 and submitted leave slips to show
5 himself on a working day that day,
6 and expenses to pay for a motel room.

7 Q. Well, do you have a
8 recollection of whether or not he was
9 denied on that request --- it was a
10 request for reimbursement; right?

11 A. Yes.

12 Q. And do you know whether he was
13 denied?

14 A. No, he was not denied.

15 Q. He was not denied?

16 A. He was not denied.

17 Q. Then he didn't ---?

18 A. You mean, originally he was
19 denied, yes. I thought you meant
20 after the grievance procedure or lost
21 and damaged process is what it was,
22 actually.

23 Q. Yes, sir. I meant ---.

24 A. Initially, he was denied.

25 Q. Okay. And your best

163

1 recollection of the facts that you
2 described, if he was on a --- why was
3 he allowed or why did he win that
4 grievance, if you know?

5 A. I don't recall. The board
6 ruled in his favor, and thought that
7 he should be --- that the Department
8 should pay for that.

9 Q. And wasn't that the FBI
10 meeting where the information came up
11 that there might be somebody in the
12 Pennsylvania State Police involved
13 with Mr. Stanton or maybe someone in
14 the Governor's office?

15 A. Yes, sir.

16 Q. Was he denied the
17 reimbursement for that reason, out of
18 anger?

19 A. No, sir.

20 Q. Did the Commissioner play any
21 part in that denial?

22 A. Not that I recall, sir.

23 Q. Did you?

24 A. Yes, sir.

25 Q. Well, did the buck stop with

1 you on that occasion or did you
2 discuss it with the Commissioner?

3 A. I don't recall discussing it
4 with the Commissioner, so I would say
5 the buck stopped with me.

6 Q. Now, do you specifically
7 remember if you were the person who
8 denied that grievance or whether it
9 was someone below you who --- strike
10 that.

11 Did someone below you in the
12 chain of command recommend denying
13 that grievance before --- strike
14 that.

15 I'm sorry. Let me unravel
16 this to myself. Did anyone below you
17 in the chain of command deny the
18 reimbursement before it got to you?

19 A. I believe the director of
20 Bureau of Professional
21 Responsibility.

22 Q. And that was at that time
23 Major Conley; am I correct?

24 A. Yes, sir.

25 Q. Now, did you discuss that with

1 Major Conley?

2 A. Yes, sir.

3 Q. And Major Conley indicated
4 similarly, I think, during his
5 deposition that you folks discussed
6 it. What were Major Conley's
7 objections to that request for
8 reimbursement?

9 A. That it was done so far after
10 the fact, that Captain Ober had been
11 a member of his command, and gone out
12 on a day off and rented a motel room
13 without ever submitting any reports
14 at that time or making the Major
15 aware of it. And that's compounded
16 by the fact that many, many months
17 afterwards, now he submits
18 correspondence, paperwork to change
19 that from a day off to a working day,
20 and to have this motel room that was
21 put on his --- probably his personal
22 credit card, I don't recall how. But
23 to be reimbursed for that.

24 Q. But, sir, didn't he have ---
25 whether you folks agree --- I've

1 already had the discussion with you,
2 there's no reason to visit it, about
3 chain of command and targets and who
4 you share information with. And I've
5 questioned you extensively on that.
6 I don't want to revisit that.
7 There's no need for us to. But do
8 you remember my asking you those
9 kinds of questions?

10 A. Yes, sir.

11 Q. Let's keep those in the back
12 of your mind for a moment while I ask
13 these follow-up questions. Given
14 that background, those questions and
15 what we know now, didn't Captain Ober
16 have a good reason for not submitting
17 the reimbursement request right away?
18 In other words, there was a method to
19 what he was doing, there was a reason
20 for it; was there not?

21 A. Not in my mind.

22 Q. Well, we know that. And I'm
23 sure you already disagree with the
24 arbitration panel or arbiter or
25 whoever it was decided, I don't know

167

1 how far it got there. But
2 eventually, he prevailed with the
3 --- got the reimbursement; am I
4 correct?

5 A. Yes, sir.

6 Q. So somebody respectfully
7 disagreed with your analysis of that;
8 correct?

9 A. Yes, sir.

10 Q. And in public administration,
11 that happens every day; right?

12 A. Absolutely.

13 Q. You win some, you lose some;
14 right?

15 A. Yes, sir.

16 Q. Now, even knowing what we know
17 today, does it still bother you or
18 offend you that Mr. Ober won that
19 reimbursement? I know you still feel
20 he shouldn't have won it, I'm sure.
21 You do feel he should not have gotten
22 the reimbursement?

23 A. That's correct. I do feel
24 that way.

25 Q. What's the reasoning?

1 A. What's the reasoning?

2 Q. Knowing what you know now,
3 what's the reason?

4 A. That it was put in for after
5 the fact, I think, that it's improper
6 that a member put in for a vacation
7 day, go out and do department work,
8 pay for it himself, and two years
9 down the --- well, scratch that, not
10 two years, but considerably later put
11 in for reimbursement.

12 Q. Right.

13 A. What would have happened ---
14 and this is just rhetorical. What
15 would have happened that day if
16 Captain Ober on his day off gets
17 involved in a crash on the turnpike?
18 Is he going to call the Department
19 and say, hey, I activated myself, and
20 now I want Workmen's Compensation, I
21 want compensated. Where would the
22 buck stop? In other words, after
23 this retroactive submission for
24 annual leave and reimbursement, could
25 he have also put in documentation

1 saying, oh, by the way, I had
2 overtime that day, and I should have
3 had overtime. I have a problem with
4 the length of time that elapsed is
5 one of the big issues with me.

6 Q. Isn't it fair to say that you
7 still disagree with Captain Ober, in
8 that you feel originally he should
9 have gone to Major Conley and
10 reported what the FBI had indicated
11 to him; right?

12 A. I thought he should have
13 reported it, yes.

14 Q. And if not to Major Conley, if
15 he had some reason for that, he
16 should have to Major Hickes or
17 Colonel Hickes at that time, he
18 should have gone up --- it would have
19 been more appropriate, in fact, to go
20 to you than to Colonel Hickes?

21 A. It should have been within his
22 chain of command.

23 Q. And isn't it fair to say that
24 the justification that Captain Ober
25 had provided was that given his view

170

1 of the FBI role and his view of what
2 he needed to do, his responsibilities
3 --- we know that you disagree with
4 that, but given his view of those
5 things, it was consistent that he
6 would not put in that request for
7 reimbursement at that time. And it
8 was consistent with his view, however
9 erroneous it may have been, in your
10 eyes, that, you know, going out there
11 and renting a room and that sort of
12 thing was consistent with what he
13 felt he had to do to keep that
14 situation hidden, as it were, on
15 Colonel Hickes' orders?

16 ATTORNEY CHRISTIE:

17 Objection as to form.

18 BY ATTORNEY BAILEY:

19 Q. You can respond, sir.

20 A. It may have been consistent
21 with what Captain Ober thought he
22 should do. But what Captain Ober
23 thought he should do does not mean
24 that because he thought it was
25 consistent that it should become

171

1 automatically consistent with me. I
2 don't think it followed Department
3 rules and regulations, which doesn't
4 have any impact on what, you know,
5 Captain Ober thought was consistent.
6 I'm not alleging that there was any
7 malice or forethought or any contempt
8 in his heart when he did all this.
9 It simply didn't follow the fact that
10 we would retroactively put somebody
11 back on a day off and pay them back
12 wages for something that occurred so
13 long ago.

14 Q. As far as that trip out there,
15 wasn't he at that time under Colonel
16 Hickes' orders not to tell anyone?

17 A. I didn't know that. He was
18 actually under my command. I mean,
19 he was detached to --- I don't recall
20 what status he was. But I think on
21 the record, he was assigned to DPR.
22 He was under my authority. I never
23 heard that Colonel Hickes approved
24 that until much, much after the fact,
25 after I said it shouldn't be

1 reimbursed. And, in fact, only
2 learned that recently, actually.

3 Q. Well, how could Captain Ober
4 have followed Colonel Hickes' orders,
5 which certainly affected Colonel
6 Evanko and you, if he had --- how
7 could Captain Ober have --- a short
8 question form is very simply, how
9 could Captain Ober have obeyed
10 Lieutenant Colonel Hickes and made
11 the request for reimbursement the day
12 after it happened? How could he have
13 done that?

14 A. I didn't know that Captain
15 Ober had discussed with Colonel
16 Hickes getting a motel room, putting
17 in for a day off and taking his own
18 personal car. I didn't know that any
19 of that conversation ever occurred
20 until recently. And when I concurred
21 with Colonel --- when I concurred
22 with Major Conley about denying the
23 request for reimbursement, I was
24 unaware that that had previously been
25 approved by Major --- or approved by

1 Colonel Hickes or anything like that.

2 Q. You knew on or about the 12th
3 of May about Colonel Hickes' orders
4 to --- Colonel Hickes' orders to
5 Captain Ober?

6 A. That's correct. But that
7 doesn't --- I did not know on that
8 day that Captain Ober had discussed
9 getting a motel room, using his
10 personal car, retroactively putting
11 in for any of that stuff.

12 Q. You're missing my question
13 because I'm not making it clear. My
14 question really has nothing to do
15 with any of the detailed discussions
16 that Captain Ober may or may not have
17 had with Colonel Hickes. My question
18 very, very simply is isn't it a very,
19 very simple --- you're quite an
20 articulate, intelligent gentleman.
21 It's a simple deduction that if
22 Captain Ober is following the orders
23 of Colonel Hickes, he can't go turn
24 in that reimbursement in a timely
25 fashion, he can't do that and follow

1 and respect Colonel Hickes' orders,
2 it's impossible. So it doesn't
3 matter whether there's any detailed
4 discussion or approval or not. When
5 Captain Ober turns this thing in, it
6 has to be after the fact in order to
7 honor what he --- you believe he did
8 erroneously, which was bypass his
9 chain of command, and listen to the
10 orders of Colonel Hickes, which you
11 certainly don't question that. So,
12 you know, what was he supposed to do?
13 He's between a rock and a hard place.
14 He can't win with your analysis.

15 A. Colonel Hickes' orders to
16 Captain Ober was not to divulge the
17 nature of the ongoing investigation.
18 Colonel Hickes' orders to Captain
19 Ober was not to go out and put in for
20 a day off, not to go out and rent a
21 motel room, I mean, with the FBI.
22 Certainly, there was an alternative
23 to Captain Ober's method. He could
24 have said to Major Conley, I'd like
25 to check the Western Offices of

1 Internal Affairs on a certain day,
2 and he could have went out and met
3 with the FBI in their office. The
4 issue is the day off and the issue is
5 the motel room and the retroactive
6 request for payment.

7 Q. Do you have any information to
8 indicate that Captain --- and if so,
9 state it for the record, because I
10 can't find a smidgen, any information
11 at all that would indicate that
12 Captain Ober did anything other than
13 go out and do day off, day on,
14 Pennsylvania State Police business
15 and meet with the FBI?

16 A. That's exactly the point.
17 That's correct. There is no other
18 information. So when you're acting
19 in the interest --- if you're
20 performing Commonwealth business,
21 then you should do it on Commonwealth
22 time in a Commonwealth vehicle.

23 Q. Well, apparently he did --- or
24 at least somebody decided that he
25 did, and he was reimbursed. And we

1 understand that you very respectfully
2 and strongly disagree with that; is
3 that correct?

4 A. Yes, sir.

5 Q. And you still do?

6 A. Yes, sir.

7 Q. Now, did you --- are you the
8 person that asked that the binding
9 decision of the Special Arbitration
10 Committee be appealed, challenged?
11 Were you the one that did that or was
12 that Commissioner Evanko? Because
13 somebody directed your attorneys to
14 do that, and I want to know how
15 directed --- because I cannot
16 conceive of Joanna Reynolds doing
17 that without being directed to do it.
18 So I'd like to know who did. It was
19 either you or it was Colonel Evanko?

20 A. The appeal of what, sir?

21 Q. If I understand --- my
22 understanding is that your lawyers
23 were --- my understanding is that
24 Colonel Hickes had approved this
25 thing, the reimbursement, at some

1 point?

2 A. Yes.

3 Q. My understanding is that it
4 then became disapproved at some
5 point; is that correct?

6 A. Yes.

7 Q. And my understanding is that
8 there was a --- you have an agreement
9 with the Pennsylvania State Troopers
10 Association where there's some kind
11 of a binding arbitration committee,
12 something of that sort?

13 A. Yes.

14 Q. And it is my understanding
15 that Captain Ober prevailed there?

16 A. Yes.

17 Q. And it is my --- maybe I'm
18 wrong. I don't know, sir. Help me
19 if I am. It is my understanding that
20 that decision was appealed somewhere
21 or challenged?

22 A. I don't recall that there is
23 an appeal process for that, but I can
24 certainly tell you that, yes, I
25 disagreed with the position. And

178

1 yes, I think I had a discussion with
2 the Office of Administration, Bill
3 Mullen, wanting to know is there an
4 appeal process that --- can this be
5 appealed, so on and so forth.

6 Q. I'm not saying anything can't
7 be appealed. I once sued a Judge.
8 And by the time I got to the Supreme
9 Court of the United States, myself
10 and the Supreme Court --- I mean, if
11 you want to talk about strong
12 feelings, believe it or not, I more
13 strongly disagreed with them than you
14 do with this decision over his
15 reimbursement. Okay. But I lost.
16 There's nothing I can do about it. I
17 lost. Now, I appealed that, and I
18 appealed it right up on the line.
19 And finally, the Supreme Court said
20 to me, hey, Mr. Bailey, we're not
21 going to listen to this. I appealed
22 it to the Third Circuit, and they
23 tell me this Judge was acting in a
24 judicial capacity. I don't agree.
25 But hey, I'm nothing but a --- I

1 mean, Judges tell me to do things, I
2 do them. You know, I'm like anybody
3 else. Now, in this case, what I'm
4 talking about is --- let's talk about
5 what Mr. Mullen told you. Did Mr.
6 Mullen tell you --- what was the
7 advisability of appealing this thing
8 to Mr. Mullen? What did he say?

9 A. I don't recall. But I don't
10 think it was appealable. I thought
11 the findings of that board were
12 final. But again, I'm acting on
13 recollection here.

14 Q. Well, you're not a lawyer.
15 And I'm not --- these folks probably
16 know more about this stuff than I do.
17 It was my understanding that's the
18 case. All I'm asking you is was this
19 appealed just to harass and
20 intimidate Mr. Ober? If it was not,
21 it was not. There was a basis for
22 the appeal. Can you tell me who told
23 you there was, except for discussion
24 you might have had with Joanna or
25 Barbara or somebody?

1 A. Well, the question you asked
2 me was two parts. The first part
3 ---.

4 Q. Well, let me go back. I'm
5 sorry. You're absolutely right, it
6 was complex. Mr. Mullen tells you,
7 hey, this is --- I mean, the word
8 binding means something. This is
9 binding arbitration. This is the
10 kind of thing, you sit down there,
11 you go and you grieve, and that's the
12 way it goes. Now, unless it violated
13 some incredibly, you know,
14 unreasonable and outlandish thing,
15 it's my understanding is, hey, I'm
16 sorry, you lose, that's the end of
17 it. You know, you'd have filed
18 sanctions and come up with --- going
19 back to his billfold bag for that
20 \$1,700. But the point is, you appeal
21 it. And Mr. Mullen tells you it's
22 not appealable. But who told your
23 lawyers to appeal, you or Mr. Evanko?
24 A. I don't --- I may have had
25 conversations with the attorney about

1 appealing it. I don't know. But
2 your first question was, was it done
3 to --- and I forget the --- to punish
4 or it had something to do with
5 Captain Ober?

6 Q. Yes. Let me go back to that.
7 And I'll give you a fair chance ---
8 and I apologize to you. I did.

9 A. I'd like to answer that.

10 Q. Yes, sir. I had asked you if
11 the decision to appeal was made to
12 punish or harass or intimidate
13 Captain Ober?

14 A. It was not. And my position
15 was very simply, it really had little
16 to do with Captain Ober, in fact. In
17 the preparation for that process, if
18 you will, the fact finder, I can't
19 say arbiter, but the advocate for the
20 Commonwealth never came to me and
21 asked me why I wanted to deny it.

22 Q. Is that Mr. Grab?

23 A. It was Mr. Grab. He, in fact,
24 went to Colonel Hickes and asked
25 Colonel Hickes why he approved it,

1 and so on and so forth. But no one
2 ever came to me and said, why did you
3 deny it or no one ever said to Major
4 Conley, to my knowledge, why did you
5 deny it. So in my perception, the
6 management side of the Department,
7 meaning me and Major Conley, never
8 had an opportunity to be heard. So
9 the facts of why it was retroactively
10 approved were heard, Colonel Hickes'
11 position. But the person that
12 actually denied the retroactive claim
13 was never asked why. So it really
14 had little, if anything, to do with
15 Captain Ober.

16 ATTORNEY BAILEY:

17 I'm going to take a
18 break for --- it will just be
19 30 seconds. No reason to shut
20 down the equipment.

21 SHORT BREAK TAKEN

22 BY ATTORNEY BAILEY:

23 Q. Okay. Did you ever discuss
24 the denial of the reimbursement? I'm
25 not talking about the issue of

1 appealability now. I'm talking about
2 the original denial of the
3 reimbursement with the Commissioner.

4 A. I don't believe I did, no.

5 Q. Well, I have a document dated
6 October 4th, 1999, time and
7 attendance, Captain Darrell Ober.
8 It's to Deputy Commissioner of
9 Administration, T.K.C. Do you know
10 who T.K.C. is?

11 A. That is me, sir.

12 Q. It says, attention director of
13 Bureau of Professional Responsibility
14 from Paul J. Evanko, Commissioner.
15 Do you recognize those initials?

16 A. Yes, sir.

17 Q. And it says correspondence
18 from Captain Ober, correspondence
19 from Major Hawthorne and Conley,
20 director. And DPR, IAD, all that
21 kind of stuff. General invoice,
22 reimbursement for Captain Ober.
23 Number one, I have conducted a full
24 and complete review of the
25 circumstances surrounding Captain

1 Ober's request. Based on my review,
2 Captain Ober's requests are denied.
3 Therefore, the amount of \$83.74 shall
4 not be provided to Captain Ober.
5 Additionally, dated March 15th, 1999,
6 changed annual leave. Please notify
7 Captain Ober and provide him a copy
8 of this correspondence. Do you have
9 any recollection of that?

10 ATTORNEY CHRISTIE:

11 Can we mark that ---
12 could we mark that, wherever
13 we are, 43?

14 ATTORNEY BAILEY:

15 Sure.

16 ATTORNEY CHRISTIE:

17 And make copies.

18 A. I don't recall it, sir.

19 BY ATTORNEY BAILEY:

20 Q. You don't recall it?

21 A. No.

22 Q. Well, then I'll just have it
23 admitted and have it --- if you don't
24 recall it, you don't recall it. But
25 we're going to leave it there with

1 your ---.

2 ATTORNEY BAILEY:

3 I need a copy of that,
4 though, Mr. Brown, when you
5 get a chance.

6 ATTORNEY BROWN:

7 Okay.

8 BY ATTORNEY BAILEY:

9 Q. Now, I don't know that you've
10 ever seen this. But just tell me if
11 you've ever seen it.

12 ATTORNEY BAILEY:

13 I'd like to have it
14 marked, too.

15 BY ATTORNEY BAILEY:

16 Q. Tell me if you've ever seen
17 that. Can you identify it for us,
18 please?

19 A. It's a time and attendance ---
20 it's form 501. It's correspondence
21 dated July 1st, 1999, subject time
22 and attendance, to Captain Darrell G.
23 Ober, from Major Hawthorne and
24 Conley. To the best of my
25 recollection, I have not seen this

1 document before. And I note on the
2 bottom that it does not a cc going to
3 the deputy commission of
4 administration.

5 ATTORNEY CHRISTIE:

6 Do you want that marked
7 Four?

8 (Deposition Coury
9 Exhibit Four marked for
10 identification.)

11 ATTORNEY BAILEY:

12 Go ahead and mark it,
13 yes.

14 BY ATTORNEY BAILEY:

15 Q. Now, I don't know if any of
16 this refreshes your recollection at
17 all in any way. Given the fact that
18 you don't remember, it probably
19 doesn't. But let me ask. Did
20 Colonel Evanko participate in making
21 the decision to appeal the binding
22 arbitration decision?

23 A. Based on my recollection, I
24 only recall myself being involved in
25 that process. I don't recall having

1 any discussions with the Commissioner
2 about it. I, in fact, am the one who
3 had taken exception with it for the
4 reasons I stated. I do not recall
5 the Commissioner playing a role in
6 that.

7 ATTORNEY BAILEY:

8 Have you ever seen this
9 document, Counsel?

10 ATTORNEY CHRISTIE:

11 Do you want me to mark
12 this Coury Four, Counsel?

13 ATTORNEY BAILEY:

14 Please. Whatever the
15 number is.

16 ATTORNEY CHRISTIE:

17 Strike that. It's
18 Coury Five. Sorry.

19 (Deposition Coury
20 Exhibit Five marked for
21 identification.)

22 A. I do not recall seeing that,
23 Mr. Bailey.

24 BY ATTORNEY BAILEY:

25 Q. Okay. Do you have a

1 recollection of an investigation of
2 an individual named Stackhouse?

3 A. Yes, sir.

4 Q. Do you have a recollection of
5 who ordered Captain Skurcis to
6 retrieve a copy of the Stackhouse
7 investigation from Ober?

8 A. Retrieve it when, sir?

9 Q. It would have been sometime in
10 December of 1999 by then Lieutenant
11 Brown?

12 A. No, sir, I don't.

13 Q. Do you have a recollection of
14 your ever giving Mr. Skurcis any
15 instructions that the Stackhouse
16 investigation was to be taken back
17 from --- or the copy of the
18 investigation was to be taken from
19 Captain Ober?

20 A. I don't recall doing that,
21 sir.

22 Q. Did you play any role in any
23 decision that would --- that directed
24 that Captain Ober was not to testify
25 in that investigation?

1 A. None, sir.

2 Q. Do you know whether Captain
3 Ober was the supervising investigator
4 --- supervising officer of the
5 Stackhouse investigation?

6 A. For a while, he was, yes, sir.

7 Q. Why was he changed, sir?

8 A. I don't recall why or what
9 point it was changed, Mr. Bailey.

10 Q. Is that unusual?

11 A. I don't know that it's
12 unusual. It rarely happens. I mean,
13 I could see reasons why we would
14 change investigators in the
15 Stackhouse case as it relates to
16 Captain Ober. I just don't recall
17 --- I just don't recall when or by
18 whom.

19 Q. When was Captain Ober sent out
20 to Washington, ordered sent to
21 Washington?

22 A. I don't recall.

23 Q. Was it around December of '99,
24 January of ---?

25 A. It would have been late '99,

1 early 2000. I thought it was more
2 like early 2000. But again, without
3 having documents in front of me, I do
4 not know.

5 Q. Any discussions up in the
6 front office about getting rid of
7 Ober, sending him out to Washington,
8 how we can pay him back for his acts
9 of disloyalty to Colonel Evanko?

10 A. Not that I'm aware of, sir.
11 None that I took part in.

12 Q. So if Mr. Brown were called
13 under oath at some point and asked a
14 question as to his knowledge about
15 why Skurcis ordered the --- not
16 Skurcis ordered, why he was ordered
17 by Captain Skurcis to retrieve the
18 Stackhouse investigation, there are
19 no facts known to you --- should
20 Lieutenant Brown testify that,
21 indeed, Captain Skurcis told him to
22 get that investigation, there are no
23 facts that would indicate to you that
24 would indicate that you had any
25 knowledge that was going to occur; is

1 that right? Is that what you're
2 telling us?

3 A. No, sir. You asked me if I
4 directed it to be done, I said no.

5 Q. Well, what do you know about
6 it?

7 A. I know that the Stackhouse
8 investigation was taking entirely too
9 long to complete, that at one point,
10 there was a little bit more of a
11 fishing expedition than I thought was
12 been called for, if you will. And I
13 supported it, moving it onto another
14 investigator.

15 Q. Who called you about that?

16 A. I don't think anybody called
17 me about it. I was aware of it
18 because I tracked the investigation.

19 Q. You didn't give instructions
20 then or you did? I'm confused.

21 A. I don't know if I gave
22 instructions. No, I don't believe I
23 gave instructions. I certainly know
24 I concurred with a decision to change
25 investigators.

1 Q. Who would have made that
2 decision?

3 A. Major Conley would have made
4 that decision. I'm sure Major Conley
5 and I had discussions about that
6 investigation running too long, there
7 were no new leads coming up on that
8 case, and it was time to put that
9 case to rest.

10 Q. Well, you called Captain Ober
11 to talk to him about it; right?

12 A. I didn't call Captain Ober and
13 talk to him.

14 Q. Well, Major Conley did; right?

15 A. I would assume that Major
16 Conley did. I don't know that he did
17 or not.

18 Q. Now, earlier I had asked you,
19 I think, in the first part of your
20 deposition --- I know that I had
21 asked you some questions. And then
22 you testified that you transferred
23 people when it was required to meet
24 the needs of the organization?

25 A. Yes.

1 Q. And you had indicated that you
2 probably transferred more officers
3 than anyone else in the State Police
4 possibly. Do you remember saying
5 that?

6 A. What I meant was of the three
7 deputies, during our term of
8 administration, I had probably
9 recommended to the Commissioner more
10 replacements under my command than
11 the other two deputies had.

12 Q. Well, other than Captain Ober,
13 who was transferred or who was an
14 attempted transfer done on more than
15 200 miles --- permanent transfer now,
16 against their will, not in
17 conjunction with a promotion? Other
18 than Captain Ober, name me somebody
19 else.

20 A. More than --- with the
21 qualifier more than 200 miles, I
22 can't think of anyone.

23 Q. Now, do you remember what
24 happened with the Stackhouse
25 investigation, how was it resolved?

1 Do you remember what happened?

2 Without telling us --- I'm not asking
3 for any kind of confidential ---.

4 A. It was unfounded.

5 Q. And how long after --- well,
6 who was it given to --- was it given
7 to Captain Skurcis after Captain Ober
8 had it?

9 A. I don't recall, sir. I don't
10 know.

11 Q. Well, do you know whether
12 somebody called Captain Ober and, you
13 know, gave him a talking to about how
14 long it was taking or gave him sort
15 of --- you know, maybe some kind of
16 even a verbal reprimand or advised
17 him of how he was being dilatory or
18 something like that?

19 A. Not that I'm aware of. And I
20 don't know why they would give him a
21 verbal reprimand. It's not that it
22 was anything --- it wasn't a
23 violation of anything. It wasn't
24 anything inappropriate, certainly.
25 It was just a difference of opinion.

1 Management thought this thing has got
2 to end sometime, it's got to be
3 pushed through and concluded. You've
4 chased all the leads that are out
5 there. Let's wrap it up and get it
6 done with.

7 Q. Are you familiar with
8 Management Directive 525.4?

9 A. I would have to see it, sir.

10 Q. Well, if you know off the top
11 of your head, because I don't have a
12 copy of it here, I have a little note
13 here, management directive 525.4
14 issued by the Governor's office
15 establishes that temporary assignment
16 to --- it deals with temporary
17 assignments to higher classification
18 policy for state agencies. Do you
19 know of such a policy? In other
20 words, temporary assignment to fill
21 the shoes --- you know, an acting
22 director, that kind of thing?

23 A. I'm familiar with the policy,
24 sir.

25 Q. Sure. And what are the ---

1 what guidance do you employ when
2 you're making a decision like that,
3 you know, the director is going to be
4 gone for 15 days, who do you put in,
5 who walks in those shoes for those 15
6 days?

7 A. A number of different criteria
8 would play into that. How many
9 people you have to choose from, what
10 their timing grade is, what their
11 time on the job is, what their
12 performance is, what their experience
13 is, how long they've been in that
14 bureau division. There's many, many
15 factors that can come into play.

16 Q. All right. Well, let me just
17 read a few little things here that
18 I've asked my client to put together,
19 and let me see if I can verbalize it
20 as well as he could here. It's when
21 a subordinate officer is assigned the
22 duties and responsibilities of acting
23 in the place of a superior officer.
24 It's my understanding --- these are
25 questions that I had asked, that they

1 --- do they receive additional
2 monetary compensation, A. Do they
3 receive additional monetary
4 compensation?

5 A. Only for when it's more than
6 five days in any calendar year.

7 Q. Now, does such experience
8 afford that subordinate officer any
9 certain career growth and development
10 opportunities?

11 A. Let me rephrase the first
12 question. I think it's five days in
13 any calendar quarter. I'm not ---
14 something like that.

15 Q. Now, does the experience
16 afford that subordinate officer --- I
17 mean, is it a career plus kind of
18 thing?

19 A. And I think it could be or it
20 couldn't be. It depends. I mean,
21 I've been acting many times myself,
22 and I never saw it as a career plus
23 for me. I've never seen any real
24 benefit to it. But in terms of
25 possibly experience or --- depends on

1 how the members view it.

2 Q. Have you ever generated a memo
3 indicating the importance of rotating
4 acting duties among commanders,
5 stressing, quote, teaching a member
6 to be administratively prepared for
7 the next level, closed quote?

8 A. I don't recall generating it.
9 It does sound familiar to me.

10 Q. What would your reason --- if
11 you did that, what would your reason
12 for it be?

13 A. Well, in fairness. It's not
14 to help the member get ready for the
15 next step or anything. It's to help
16 the member know the duties and
17 responsibilities of the
18 organizational segment that they work
19 in.

20 Q. To teach people out there, so
21 they have a go at it, and an
22 opportunity to perform. But it's
23 also for the good of the order; isn't
24 it? Because it spreads out the
25 experience in case somebody needs to

1 assume duties for a superior; right?

2 A. Well, it does keep everybody
3 on the same page within that bureau,
4 uniform leadership.

5 Q. Now, wasn't Captain Ober under
6 your command when you were a director
7 of BPR?

8 A. Yes.

9 Q. Were there times when you
10 assigned Captain Ober to the acting
11 director's position on your behalf?

12 A. Yes.

13 Q. Now, administrative regulation
14 411 sets State Police policy for
15 naming individual for assignment out
16 of class; isn't that right?

17 A. Yes.

18 Q. And then do you remember the
19 question I had asked you about
20 management directive 525.4?

21 A. Yes.

22 Q. Okay. Now, I have a note
23 here, both policies state the
24 personnel in the same pay rank or
25 classification or in the same pay

200

1 range shall be temporarily assigned
2 on a rotational basis when practical.
3 Is that also correct?

4 A. Yes.

5 Q. Okay. Do you have a
6 recollection of reviewing with some
7 of your subordinates in your chain of
8 command, about the acting in place of
9 policy?

10 A. No, sir.

11 Q. Well, do you have any
12 recollection of becoming aware of how
13 Mr. Ober was treated in that regard
14 as compared to his colleagues?

15 A. Well, in BPR and law under
16 command, Major Conley? Is that what
17 you're asking me?

18 Q. And then we're going to talk
19 about LCE?

20 A. No. I don't think Captain
21 Ober was under Major Conley that long
22 to really get a handle on that.

23 Q. Right. How about LCE?

24 A. I don't know about LCE.

25 Q. When a bureau director is

201

1 going to appoint someone in their
2 place, do they --- I'm sorry, sir.
3 When you were a deputy Commissioner,
4 did they consult with you about that?

5 A. Rarely. I mean, probably
6 50/50, half of them did and half of
7 them didn't.

8 Q. You had no requirement that
9 they do so?

10 A. No, sir.

11 Q. Did you ever indicate to
12 anybody that Captain Ober should not
13 participate in an acting capacity?

14 A. Never, sir.

15 Q. Did you have any request from
16 any subordinate to discuss with you
17 whether Ober should be appointed in
18 an active capacity?

19 A. No, sir.

20 Q. Did you ever have a discussion
21 with Major Dewire about overacting in
22 a capacity as a replacement?

23 A. No, sir, not about acting in a
24 capacity. I was more along the lines
25 of promotional opportunities.

1 Q. Tell us about those.

2 A. Well, at some point, and I
3 would say it was around the time that
4 Major Koscelnek had a heart problem
5 and was getting a five-way bypass.
6 And also Major Dewire was having
7 health problems. But Dewire had come
8 to see me on at least one occasion I
9 can recall to discuss what would
10 happen if Koscelnek had to leave his
11 position of area commander in the
12 northeast. Major Dewire wanted to
13 express to me his interest in going
14 to the northeast, which would leave a
15 vacancy in LCE. And if Major
16 Dewire's health were to reach the
17 point that he had to leave the
18 Department, what would happen to that
19 vacancy in LCE?

20 Q. And before I ask you the next
21 question in that regard, Ober was
22 named as director of the
23 administration division of LCE on or
24 about May 30, 2000; is that correct?

25 A. I don't know the date, sir,

1 but it would have certainly been
2 before July of 2000.

3 Q. And do you know whether or not
4 during that period of time that he
5 served as acting director of LCE for
6 a total of about 40 hours?

7 A. Before that date, no, sir.

8 Q. During that period of time you
9 wouldn't know that?

10 A. No, sir, I wouldn't.

11 Q. Or that Captain Leonard
12 McDonald, the captain of operations
13 in LCE served in that capacity a
14 total of 280 hours, five times as
15 many hours as Captain Ober, you
16 wouldn't know anything about it?

17 A. I wouldn't know anything about
18 it. And are we talking prior to July
19 of 2000 or after.

20 Q. Well, July of 2000 would fall
21 in there. We're talking about May
22 30, 2000 until September 30, 2001,
23 from my figures.

24 A. I don't know the amount of
25 hours, but I do know that Captain

1 McDonald was almost always the acting
2 ----.

3 Q. Do you ever review that and
4 ask why? I mean, do you review that
5 policy as part of your --- as your
6 role as a commander, you know, as a
7 deputy Commissioner?

8 A. No.

9 Q. Did you ever have any policy
10 that way or review it or go over it
11 with your bureau director?

12 A. No, sir.

13 Q. Okay. All right. Why don't
14 you go back to this promotional
15 thing. You had a discussion, talking
16 about the difficulties, potential
17 difficulties at least, with the
18 regional commander and with the
19 commander of LCE because of health
20 problems. And Captain Ober was
21 somehow fit into those discussions,
22 as I understood your testimony. Can
23 you tell us in what way?

24 A. He fit in while Major Dewire
25 was discussing with me the potential

1 successor for the director of LCE
2 should it arise because of Dewire's
3 leaving or --- well, Dewire's
4 leaving. And he felt that the
5 Commissioner should consider Captain
6 McDonald for that position.

7 Q. Okay. Did he say why?

8 A. Yeah, he did, overall
9 experience, time in grade, time on
10 the job, performance, many issues.

11 Q. Did he ever indicate that he
12 felt that Captain Ober should be
13 passed over because the front office
14 was upset with him or didn't like him
15 or Colonel Evanko didn't like him?

16 A. Absolutely not. The nature of
17 Major Dewire's conversations was not
18 Captain Ober's shortcomings, but
19 Captain McDonald's strengths and why
20 Captain McDonald should be
21 considered, not why Captain Ober
22 shouldn't be considered.

23 Q. Well, was Mr. McDonald on the
24 eligibility list?

25 A. At that time, he was. This

1 was prior, I believe, to a new
2 examination or new eligibility list.

3 Q. Do you know whether Major
4 Dewire ever told Ober he was passing
5 him over or not considering him for
6 some sort of career enhancement move
7 simply because the attitude of the
8 front office towards Captain Ober was
9 such that Captain Ober could not ---
10 it wasn't going to do any good to
11 recommend him anyway, anything like
12 that?

13 A. I'm not aware of that.

14 Q. Do you have any knowledge of
15 anything like that?

16 A. No, sir, I don't have any
17 knowledge of that.

18 Q. If that were correct, that's a
19 pretty debilitating thing to occur in
20 someone's career; don't you think?

21 A. If the major were to say
22 that's --- what's the debilitation?

23 Q. No. If that were to be the
24 case. If that were to be the case.
25 I mean, the criteria for promoting

1 people, the criteria for giving
2 people promotional opportunities are
3 objective, honest, decent criteria
4 that don't have anything to do with
5 personal feelings or prejudices, but
6 have to do with rules and regulations
7 and proper custom practices and usage
8 of the Pennsylvania State Police
9 because the Pennsylvania State Police
10 are above the personal feelings of
11 individuals, officers or men; isn't
12 that correct?

13 A. As well as the pool of other
14 eligible candidates.

15 Q. Of course. That would go
16 without saying I would imagine;
17 right? Sir, are you familiar with
18 questions we've asked about
19 Subsection C to AR1-1.10 --- 102
20 really, Subsection C, chain of
21 command provisions?

22 A. The only way I would have been
23 familiar with that is if I heard it
24 in Colonel Conley's deposition. And
25 I don't recall being present for that

1 part. I don't recall hearing that
2 part, Mr. Bailey.

3 Q. Well, one of the issues that
4 has arisen in this litigation with
5 some frequency are amendments to
6 AR1-1 and timeliness of certain
7 amendments to 1-101, in particular,
8 some changes that were on the new
9 AR1-1 assigned --- the change sheet
10 was signed by the Commissioner, by an
11 autopen by a Mary Bungo (phonetic) or
12 about February 22nd, according to the
13 transmittal sheet, of 2001. Do you
14 have any recollection of looking at
15 the changes to AR1-1? Your
16 signatures are on that sheet.

17 A. I don't recall looking at
18 them, sir.

19 Q. Well, did you ever discuss any
20 changes to that document with anyone
21 during the year 2001 from January 1,
22 2001 to February 22nd, 2001?

23 A. When did the changes come out,
24 sir?

25 Q. Well, I think they were

1 approved on or about February 22nd,
2 23rd, 2001 and ended up being
3 distributed in March of 2001.

4 A. So you're asking me if I had
5 any discussions with anyone prior to
6 that date of it being released?

7 Q. Yes. Let's say March, one
8 March.

9 A. No, sir.

10 Q. None?

11 A. No, sir, none that I can
12 recall.

13 Q. Okay.

14 A. I've only ever heard of that
15 issue in the context of this case.
16 That's the first time I heard of
17 that.

18 Q. Do you have a recollection of
19 AR1-1 being sent back from the front
20 office to revisions on or about
21 January 19th, 2001, back to R and D?

22 A. No, sir.

23 Q. Are you familiar with the ---
24 Colonel Evanko's policy and the
25 Department's desire for

1 accreditation?

2 A. Yes.

3 Q. AR1-1 revisions, were they
4 necessary for accreditation?

5 A. I don't know specifically.
6 Accreditation isn't something that
7 came under me. That wasn't one of my
8 areas.

9 Q. What was your policy when an
10 AR was submitted to you for review to
11 approve a change, you know, in
12 Department regulations? Did you have
13 any kind of set policy or did you
14 have an assistant doing that work for
15 you?

16 A. It would depend. I never
17 wanted my paperwork in the office to
18 sit around. So if I wasn't there and
19 someone was sitting in for the day or
20 a couple days or someone was acting,
21 I told them to move the paper, sign
22 it and move it on, unless it was
23 something they really felt
24 uncomfortable doing. And other than
25 that, when it came to me with a

211

1 change sheet, first of all, I would
2 look to see who already signed it,
3 was it in my shop or not? In other
4 words, if it was generated by
5 operations and had to do with
6 operations, I would read it and sign
7 it when I was deputy operations. If
8 I saw it was something that was more
9 staff --- and I can give you a prime
10 example, if it was something that was
11 under the Deputy of Staff and, you
12 know, resided in his --- if I saw
13 that Colonel March signed it, I
14 typically didn't put much time into
15 it. I mean, it was his shop, his
16 business. If it suited him, it
17 should suit me and typically I would
18 give it just a quick once over, sign
19 it and move it on. If the
20 Commissioner signed it ahead of my
21 review, if it was certainly good
22 enough for the head of the agency, it
23 was fine with me and I gave it a
24 quick review and moved it on.

25 ATTORNEY BAILEY:

212

1 Where are we on time on
2 that tape?

3 VIDEOGRAPHER:

4 We have about 45
5 minutes.

6 ATTORNEY BAILEY:

7 Okay.

8 BY ATTORNEY BAILEY:

9 Q. Now Colonel, this Subsection C
10 I did question you a little bit about
11 early that had to do with chain of
12 command. But do you ever remember
13 seeing it even during this litigation
14 looking at it?

15 A. No, I don't.

16 Q. And is it fair to say that you
17 did not contribute to either the
18 origination or the drafting or the
19 implementation of it beyond what
20 apparently were routine paper
21 functions that you performed in the
22 execution of your administrative
23 duties, pretty accurate and fair to
24 say?

25 A. That is accurate.

1 Q. And you have no, as you sit
2 here today, specific --- you have no
3 specific recollection of changes or
4 dealing with charges to AR1 during
5 calendar 2001; fair to say?

6 A. I do not recall it, sir. I
7 have no recollection of doing
8 anything with AR1-1.

9 Q. Now, without revealing the
10 substance of any conversation you may
11 have had, it follows then that you
12 had no discussion with the
13 Department's lawyers about it;
14 correct?

15 A. I do not ---.

16 Q. After this --- I mean, during
17 that period. Remember, we're during
18 this period of time. I don't care
19 about afterward.

20 A. We're doing ---.

21 Q. We're doing January 1, 2001.
22 Strike that.

23 We'll go back to October 30.
24 We might as well get the whole thing
25 in here. Between October 20, 2000

1 and February 23, 2001, you had no
2 discussions with anybody about
3 Subsection C, the chain of command
4 provision change in AR1-1 that you
5 can recollection to anybody?

6 A. I cannot recollect any
7 discussions about AR1-1 prior to its
8 release --- whatever date it was
9 released.

10 Q. Now, you have a computer in
11 your office; don't you?

12 A. No, sir.

13 Q. If you want to look at a
14 Pennsylvania State Police regulation,
15 can you call it up on your computer?

16 A. Yes, sir.

17 Q. Why not?

18 A. I'm not a techie, I don't know
19 the reason why. I just know I can't
20 do it.

21 Q. Do you know whether they're on
22 there?

23 A. Regulations, no, sir, they're
24 not.

25 Q. Okay. So if you want to look

1 at them ---.

2 A. We have e-mail, that's about
3 it.

4 Q. Okay. So if you want to look
5 at them or look at a regulation,
6 you've got to go down and either look
7 at the research file, go to where
8 they're posted or call R and D or
9 maybe one of your lawyers; fair to
10 say?

11 A. Yes, sir.

12 Q. Yes, because you can't like
13 jump on your law or jump on your
14 little old computer and dial it up
15 and look at it; right?

16 A. Unless somebody sends it as an
17 attachment ---

18 Q. And e-mails it or something.

19 A. --- and e-mails it.

20 Q. I understood that you had
21 wanted to break at 3:00?

22 A. Yes, sir.

23 ATTORNEY BAILEY:

24 Okay. Can we
25 suspended, please?

216

1 VIDEOGRAPHER:

2 Suspending video, 2:52

3 camera time.

4 OFF VIDEOTAPE

5 SHORT BREAK TAKEN

6 ATTORNEY BAILEY:

7 There is a recording

8 device in operation.

9 ON VIDEOTAPE

10 VIDEOGRAPHER:

11 Ladies and gentlemen,

12 video is now in operation.

13 Camera time is now 3:15.

14 BY ATTORNEY BAILEY:

15 Q. Colonel, are you at least
16 generally familiar with AR425? Do
17 you remember you talked about that?

18 A. Generally familiar with it,
19 I've been away from it for sometime
20 now generally.

21 Q. Well, Section 25.07
22 disposition says, a complaint
23 investigation four policy void,
24 indicates that the action of the
25 Department or the involved member or

1 members was not inconsistent with
2 existing department policy, but the
3 complainant still suffered harm.
4 Now, you know of the administrative
5 investigation which we contend was
6 ill conceived and improper and
7 there's a difference between the
8 parties on this issue conducted by
9 and directed by Colonel Evanko, not
10 conducted by him so much, but
11 directed by him. Do you remember
12 that investigation?

13 A. Yes, sir.

14 Q. Okay. Now, let's assume for
15 the sake of argument that Captain
16 Ober was somehow wrong in not telling
17 Major Conley and not coming to you as
18 opposed to going to Colonel Hickes,
19 who gave him an order. But let's say
20 that that was an error in his part,
21 let's say that. What harm resulted
22 in the Pennsylvania State Police or
23 was it a matter of what harm could
24 happen to the State Police?

25 A. More what harm could have

1 happened.

2 Q. Now, were the State Police ---
3 was the organization or any members
4 of the organization harmed by what
5 Captain Ober did that you recollect?

6 A. Only the trooper that got
7 arrested.

8 Q. The trooper that got arrested
9 was harmed by what Captain Ober did?

10 A. No, sir, not by what Captain
11 Ober did.

12 Q. Okay. Now, as part of the
13 duties and responsibilities of the
14 Director of BPR under 25.08(b)
15 Subsection three, it says, ensure
16 that a record of all investigations
17 is maintained and that all
18 investigations are conducted in a
19 fair, prompt, thorough and impartial
20 manner. Do you recollect at least
21 general language like that?

22 A. Yes, sir.

23 Q. And that internal
24 investigation reports are kept in a
25 secured area within the bureau.

1 Reports shall be completed within the
2 time limits established through
3 collective bargaining agreements.
4 Extension to the initial 40-day
5 investigative time period shall be
6 based solely on criteria related to
7 the complexity of the investigation
8 and available resources. Do you have
9 recollection of those positions?

10 A. Yes, sir.

11 Q. Now, do you know whether these
12 --- either the spirit or letter of
13 special order 98-22, revisions to
14 AR425, internal investigations,
15 whether or not the spirit or letter
16 of these provisions were violated as
17 I have read them to you by the
18 Department or its investigators in
19 Captain Ober's case or do you think
20 they were pretty much adhered to?

21 A. The museum investigation?
22 What investigation are you referring
23 to, sir?

24 Q. We're still talking about what
25 you call the administrative

220

1 investigation into Captain Ober?

2 A. No, I really don't see AR425
3 affecting that because it was a fact
4 finding administrative inquiry
5 conducted by the Commissioner. It
6 was not launched in any way to --- in
7 the context of an Internal Affairs
8 investigation, which could have
9 resulted in discipline to anyone.

10 Q. Okay. Is that why Captain
11 Brown assigned it a BPR number in
12 June --- excuse me. I think it was
13 July 20th, 1999.

14 A. I don't know why he assigned a
15 number to it. I know that everything
16 has to have some type of number for
17 event tracking.

18 Q. Has that investigation been
19 closed?

20 A. I don't know, sir.

21 Q. But you never stated whether
22 or not --- telling Captain Ober
23 whether it was closed; right?

24 A. No, sir.

25 Q. Well, I'll ask you about

1 A. As far as I was concerned,
2 yes, sir.

3 Q. All right. Now, if you'd look
4 over this piece of paper and then
5 pass it back to me because I only
6 have one of these. I'm wrong. It's
7 in there. You don't have any page
8 numbers and I missed that. Can you
9 give that back to me?

10 ATTORNEY CHRISTIE:

11 And by looking through
12 the document, you're referring
13 to Coury Number Two?

14 ATTORNEY BAILEY:

15 Yes.

16 ATTORNEY CHRISTIE:

17 Just note the page it's
18 on.

19 ATTORNEY BAILEY:

20 Let me get the pages
21 here.

22 ATTORNEY CHRISTIE:

23 It appears to be page
24 ten of 67.

25 ATTORNEY BAILEY:

223

1 Okay. I had page nine
2 or ten. Right.

3 BY ATTORNEY BAILEY:

4 Q. Do you have it in there? It
5 says, February 12th, 2001 at the top.
6 Do you see it?

7 ATTORNEY CHRISTIE:

8 We're looking at page
9 --- and the witness is looking
10 at page ten of 67 pages of the
11 Exhibit Coury Two. That is a
12 memo dated February 12th,
13 2001.

14 ATTORNEY BAILEY:

15 Okay. And that's what
16 I'm looking at.

17 ATTORNEY CHRISTIE:

18 Supervisory inquiry IAD
19 1999-409. Is that what you're
20 referring to, Counsel?

21 ATTORNEY BAILEY:

22 Yes.

23 BY ATTORNEY BAILEY:

24 Q. Colonel Coury, how would a
25 document like this find itself into

1 --- find its way into this file?

2 A. I would think that paragraph
3 number three holds the answer, that
4 apparently about one month before
5 this letter was generated, which
6 would have been January 2001, Captain
7 Ober contacted Ms. Poso wanting to
8 know if any of the State Police had
9 been around asking questions about
10 his activities. So Poso must have
11 contacted Hunt, who contacted the
12 Department and the Department
13 probably called to find out what was
14 going on. And obviously, it was
15 related back to this investigation.

16 Q. Well, why was it put in a
17 file, that notifying Ober or his
18 lawyer or whoever?

19 A. I guess because there's
20 probably nothing to it. I mean, I
21 don't know this. I'm just making
22 assumptions that I certainly should
23 not. This is more of a question for
24 Major Pudliner to answer as opposed
25 to me.

1 Q. No. I want to ask you because
2 you're past BPR director, because
3 you're the head of operations and
4 because you have great experience.
5 And I just want to know, is it a
6 normal policy to add additional
7 documents to a closed file without
8 notifying the subject of the
9 investigation. I'd like to know if
10 that was a past practice when you
11 were a deputy Commissioner with the
12 Pennsylvania State Police?

13 A. I don't think there is an
14 established past practice because it
15 rarely happens. It certainly doesn't
16 violate any practice.

17 Q. Why doesn't it violate ---?

18 A. It seems rather prudent to me
19 actually.

20 Q. Well, why ---?

21 A. Because he was cleared of it.
22 And this tends to support those
23 things. I mean, again, it just has
24 to go with tracking and history
25 things.

1 Q. Okay. But this is --- why is
2 he not notified about this? Why do
3 we have to --- we're in a lawsuit and
4 this thing ends up bubbling up in a
5 file. If you'll forgive me, why
6 would there not be --- if this is a
7 file concerning a member of the
8 Pennsylvania State Police, you or
9 anybody else, where they had been
10 investigating, I understand the file
11 is closed. I understand there may be
12 some value to adding this. Let's be
13 hypothetical and say that it was a
14 bad letter indicating a bad thing
15 indicating there was bad information
16 and don't read responses. Don't read
17 responses, sir. Let me ask you if
18 you know of any other situations
19 where a document like this was added
20 to a file and a person wasn't told?
21 I know you said it was prudent
22 because you thought it was
23 exculpatory, but why wasn't Captain
24 Ober notified?
25 A. Your question again was two

1 parts ---

2 Q. I'm sorry.

3 A. --- and the first part was
4 asking if I was aware of it. To the
5 best of my recollection, I'm not
6 aware of any other instance that
7 happened. And quite frankly and
8 honestly, why Captain Ober was not
9 notified is a question for Major
10 Pudliner and Colonel Conley.

11 Q. Okay. But as far as the State
12 Police practices are concerned, do
13 you know of any other instances where
14 there were additions to an
15 investigation, an additional
16 investigative inquiry that was added
17 to a file without the person who's a
18 subject of the file being notified?

19 A. I don't recall any, sir.

20 Q. Is Major Hunt out there
21 looking for things to do to Captain
22 Ober; do you know?

23 A. No, sir, I wouldn't think so.

24 Q. Is there a policy of getting
25 even or getting back at Captain Ober

1 because he's had the good fortune of
2 legally prevailing so far in his
3 relationship with the Department and
4 the Commissioner?

5 ATTORNEY CHRISTIE:

6 Just objection to
7 characterization of legally
8 prevailing. I would take
9 issue with that based upon the
10 actual record in this case and
11 the preceding cases.

12 BY ATTORNEY BAILEY:

13 Q. All right. Well, let me
14 restructure the question. Is there
15 some kind of policy out there to get
16 back at or to punish Captain Ober for
17 his --- let me tell you why I asked
18 that. I got this thing about his
19 emotional --- being emotionally
20 distraught, which you characterize as
21 a duty and a compassionate response.
22 Okay. And that's fine.

23 You have this issue here,
24 February 12th, 2001 and he's not even
25 told about it, you know, but down

1 here, paragraph three, Ms. Poso
2 further indicated to retired Major
3 Hunt that Captain Ober had contacted
4 her, via telephone, approximately a
5 month ago and made inquiries to
6 whether she had been contacted by any
7 members of the Pennsylvania State
8 Police regarding his activities.
9 Now, you know, as I see it, he has
10 every right to do that. And maybe
11 that's a factually important thing to
12 go in there. But, you know,
13 logically he should be able to
14 respond to that, rightfully or
15 wrongfully, if it's placed in his
16 file and indicates something. I
17 mean, he's a career officer in the
18 Pennsylvania State Police and he is
19 allegedly calling somebody to find
20 out whether she had been contacted by
21 members of the Pennsylvania State
22 Police regarding his activities. And
23 we don't know if he's even contacted,
24 his lawyer is told. He's got an
25 outstanding Federal Civil Rights

1 suit.

2 Now, my question is, if you
3 take that, this fact here, if you
4 take the issue having to do with the
5 emotional --- you know, the transfer
6 to Washington, which, sir, according
7 to your testimony and my research,
8 because it was not specified as
9 temporary, was a permanent transfer,
10 the only one that you know of in
11 your, and you're widely recognized as
12 a great, you know, reservoir of
13 experience in the Pennsylvania State
14 Police at a very high level, you'd
15 never known it to happen to anybody
16 who is transferred that far away from
17 home without their will. I had half
18 a dozen witnesses, including you, who
19 have no evidence to indicate that any
20 transfer to a lieutenant's position
21 for a captain ever occurred. Colonel
22 Evanko himself testified that he
23 knows of no other.

24 In light of all of those
25 things, I'm asking you, is there a

231

1 policy or some effort, I don't know
2 if it's a conspiracy or if it's just
3 be agreement, by overt agreement, I
4 don't know, or task agreement, to get
5 Captain Evanko. Is there any such
6 thing in the Pennsylvania State
7 Police? And my mind always goes back
8 to your response about the culture of
9 the Pennsylvania State Police.

10 ATTORNEY CHRISTIE:

11 You mean Captain Ober;
12 right?

13 BY ATTORNEY BAILEY:

14 Q. Is there some desire to get
15 Captain Ober?

16 ATTORNEY BAILEY:

17 I'm sorry, Counsel.
18 You're absolutely right. It
19 was a long preamble.

20 BY ATTORNEY BAILEY:

21 Q. Is there some practice or
22 policy in the Pennsylvania State
23 Police designed to get Captain Ober?

24 A. No, sir.

25 Q. Okay. And let me see if I can

1 straighten this up for you, sir.
2 March 5, 1998, Darrell, I just wanted
3 to share with you how much I
4 appreciate the job you're doing. I
5 received many position comments from
6 area and troop commanders on your
7 outstanding performance. The extra
8 mile you go to cooperate and work
9 with your fellow commanders is duly
10 noted. Needless to say, when they
11 are happy it makes the Commissioner
12 and my job easier. Keep up the good
13 work. Tom. Marc 5, 1998. Do you
14 remember that, handwritten?

15 A. No, I don't remember it, but
16 ---.

17 Q. You're a pretty important
18 fellow in the Pennsylvania State
19 Police. If I'm out there working as
20 a captain and I get a letter from my
21 lieutenant colonel, I'd like to have
22 it marked. Is that your handwriting?

23 A. Yes, sir, it is.

24 ATTORNEY CHRISTIE:

25 Coury Six.

(Deposition Exhibit
COURY Six marked for
identification.)

BY ATTORNEY BAILEY:

Q. Okay. Based on your knowledge
and experience, did Captain Ober go
through a change of moral turpitude?
Did he go through a significant
change in his morality, his conduct
in life, between that letter and when
you left the Pennsylvania State
Police?

A. No, sir.

Q. Aside from the disagreement
over his decision on or about the
first week of October 1998, what did
Captain Ober, in your eyes, do wrong?
And I'll add to that, submitting, if
you think it was a moral decision or
moral error, submitting the
reimbursement.

A. Well, first of all, I won't
say that he did wrong. Okay.

Q. Okay.

A. My comments are strictly as it

1 relates to lack of good judgment in
2 being part of that process without
3 his commanders knowing and the motel
4 and the day off issue. That is it.

5 Q. Okay. You know the reason why
6 I was questioning about the day off
7 issue is I was trying to make the
8 argument, of course, or get you to
9 make the argument through your
10 testimony that to be consistent with,
11 whether it's an error in judgment or
12 not, the judgment you made about the
13 week of October 5th, it would have
14 necessarily followed that he wouldn't
15 reveal what he was doing until later
16 on. That's all I was trying to do.
17 But if you jumble those things
18 together, is it fair to say that
19 aside from Captain Ober's error
20 around the --- and that things
21 connect to the October 1998 decision
22 that he made, that in your view was
23 an error, he doesn't think it was,
24 but aside from that, there isn't
25 anything wrong that he did. You're

1 not even saying that was necessarily
2 wrong. It was an error but my
3 understanding is that aside from that
4 you can't point to anything that he
5 did in his career that even indicates
6 an error of judgment or certainly any
7 kind of wrongdoing; right?

8 A. It lacks good judgment. There
9 was a couple minor issues when he was
10 in BPR and investigative techniques
11 he used were not in accordance with
12 my management style, but other than
13 those things, that it is, sir.

14 Q. And normally in your career,
15 there are going to be disagreements.
16 I mean, the Pennsylvania State Police
17 attracts, let's all admit, a very
18 high caliber, you know, a very
19 hardworking and capable type of
20 person. Obviously, the
21 qualifications are very high and the
22 duty requirements are very high. So
23 it's normal that during the course of
24 a career in the Pennsylvania State
25 Police you're going to have

1 disagreements or you're going to make
2 minor mistakes. But it's fair to say
3 there's no major error or character
4 flaw that you see in Captain Ober
5 during your experience with him,
6 aside from the October thing, which
7 is an error in judgment, not a
8 character flaw, but an error in
9 judgment, there isn't really anything
10 of a major significance that you can
11 point to?

12 A. No, sir, I cannot point to
13 anything.

14 Q. All right. Now, I want to
15 read something. This is from Philip
16 Dewire and it's dated October 4,
17 2000, 9:29 a.m. It was sent to ---
18 either Darrell Ober I think it was
19 sent to, but it had to do with a
20 speaking engagement and some of your
21 words up in State College,
22 Pennsylvania. And it's, I think, a
23 letter. The subject is chain of
24 command. I'd like you to look at
25 this first because I want to see if

1 you recollect this.

2 WITNESS REVIEWS DOCUMENT

3 A. I do remember, sir.

4 ATTORNEY CHRISTIE:

5 Can we mark that,
6 Counsel, as Coury Seven, I
7 believe?

8 ATTORNEY BAILEY:

9 Yes. Right. Yes. Why
10 don't we just --- yes, we can
11 mark that.

12 (Deposition Exhibit
13 Coury Seven marked for
14 identification.)

15 BY ATTORNEY BAILEY:

16 Q. I just want to ask you what
17 you mean by certain things.

18 A. Sure.

19 Q. I believe in and support
20 communication through the chain of
21 command. That speaks for itself. I
22 believe it's my duty to support your
23 unity of command, this is you
24 speaking through this communiqué, by
25 communicating with the troop

1 commanders through the area
2 commanders. Only in the case of
3 exigent circumstances will I deviate
4 the practice. Well, where in the
5 Pennsylvania State Police
6 regulations, where in the laws of the
7 Commonwealth of Pennsylvania is there
8 a statement of what those exigent
9 circumstances are? And if you want
10 to, add your own communications in
11 because I look and I can't find
12 anything. I need your help. Where
13 are these exigent circumstances
14 identified and classified?

15 A. There are none, but I think in
16 order to understand that document you
17 need to understand why it was
18 generated and that could shed some
19 light on the question you're asking.

20 Q. All right. Well, I'll give
21 you a chance to come back to that.
22 I'm going to put it in front of you
23 and then you can respond until your
24 heart is content. In such a case,
25 i.e., exigent circumstances, I will

1 important is because I didn't know
2 when you were saying these words, it
3 wasn't real clear to me at first,
4 whether you were talking about
5 something that has to do with the top
6 down. But here you say accordingly,
7 accordingly sir, incorporating by
8 reference what has gone before,
9 please remember the upward chain of
10 command to the Commissioner is
11 through the Deputy Commissioner to
12 Operations.

13 Now, in fairness to you, were
14 you telling them that I might depart
15 from the chain of command on the
16 downward look but you are not to
17 depart from the chain of command on
18 the upward look, even under exigent
19 circumstances or are you saying, and
20 this is how I'm taking this, that
21 exigent circumstances mean there may
22 be situations where you have to
23 bypass the chain of command on the
24 way up? That's the way I took it.
25 Am I taking it wrong?

1 A. There may be exigent
2 circumstances going down and up.

3 Q. That's the way I read it.
4 Now, because you go on to say, unless
5 exigent circumstances exist where the
6 Commissioner contacts the area
7 commander or bureau director
8 directly. Now obviously, that's a
9 downward look. If that type of
10 direct communication occurs, I would
11 still appreciate the area commander
12 or bureau director subsequently
13 contacting me will apprise me of the
14 communication as opposed to expecting
15 the Commissioner to advise me of the
16 communication. Now, in fairness to
17 you, you're running an outfit.
18 You've got 4,000 people. As a
19 practical matter in running that
20 department on a day-to-day basis with
21 police officers are sometimes, God
22 forbid, confronting life and death
23 situations, traffic control, all
24 kinds of nuts out there and
25 irresponsible people, I mean, you

1 know, plus you also got the routine
2 stuff you've got to do, that the law
3 requires you to do. I mean, this is
4 a pretty common --- I mean, I would
5 call this pretty much a --- and I'm
6 going to ask you, is it just pretty
7 much of a commonsense document on,
8 you know, trying to provide some
9 guidance on how to deal with the
10 requirements of chain of command so
11 we can run this organization?

12 A. Yes, sir.

13 Q. Yes. Exactly. Now, you tell
14 me how -- what those exigent --- all
15 right. Last paragraph, clearly
16 defined expectation on the issue of
17 chain of command and communication
18 supports all of our operations and
19 has proven to be the most efficient
20 and effective way of doing business
21 in paramilitary organization. Thank
22 you for your cooperation, Lieutenant
23 Colonel Tom Coury. Now, you're very
24 strong today and you've been
25 consistent about your disagreement

1 with Captain Ober's behavior. Could
2 you tell me how Captain Ober's
3 behavior fits in the context of what
4 you are sending out to your troops in
5 the field of how to deal with their
6 chain of command problems on a
7 day-to-day basis? I'd like to know
8 the difference. I'd like to know
9 what it is, if you can tell me.

10 A. Exigent certainly means more
11 than immediate, life threatening,
12 things like that to me. Exigent
13 means that they've got a barricaded
14 gunman in Norristown who has a
15 hostage and my phone at the house
16 isn't ringing so they have to call
17 the Commissioner. Downward chain of
18 command, one of the members has been
19 hurt and the Commissioner needs
20 information, I'm not around so he
21 goes directly to the major. Again,
22 you're not familiar with the context
23 of why this letter was generated and
24 that has an impact on it, because
25 certainly it had nothing to do with

1 Captain Ober, his behavior, his
2 conduct or anything like that, sir.

3 Q. If I implied, I probably did
4 and I didn't mean to, and I confess I
5 didn't mean to, sir, I didn't mean to
6 imply. I was asking the question,
7 but did not mean to imply that that
8 was in response to anything having to
9 do with Captain Ober. I want to know
10 ---.

11 ATTORNEY BAILEY:

12 Let me back this up
13 just a second. Just a second,
14 please. Okay. Let me strike
15 the last question and rephrase
16 it. Yes, you can mark the
17 document.

18 ATTORNEY CHRISTIE:

19 That's Coury Seven?
20 (Deposition Coury Seven
21 marked for
22 identification.)

23 ATTORNEY BAILEY:

24 Yes.

25 BY ATTORNEY BAILEY:

1 Q. What I'm asking is what ---
2 you don't explain what exigent
3 circumstances are in that document.
4 Do you have any other documents, any
5 other speeches, any other
6 communiqués, communications to
7 member, speeches, speaking
8 opportunities, books, articles,
9 publications of any type, manner,
10 shape, form that as a Lieutenant
11 Colonel in the Pennsylvania State
12 Police that you authored or caused to
13 be generated, which explains what
14 exigent circumstances are and would
15 explain what you mean in that
16 communiqué?

17 A. No, sir. I don't believe so.

18 Q. But exigent circumstances
19 doesn't mean a situation where your
20 new commander coming in has a
21 potential conflict of interest with
22 the FBI target, Mr. Stanton, where
23 there is a recollection at least, as
24 far as Captain Ober is concerned,
25 about the reaches of this FBI

1 investigation, and so he turns to a
2 Lieutenant Colonel, because the
3 Major, in this case Major Conley, was
4 physically not available. But he
5 turns to a Deputy Commissioner to ask
6 advice. You don't think that FBI
7 inquiry is exigent circumstances?

8 A. Mr. Bailey, there's no way
9 you'll ever convince me that waiting
10 one more day or two days for Colonel
11 Conley was such a critical --- was so
12 critical to this FBI investigation
13 that had gone on for some time before
14 that it was exigent enough it
15 wouldn't have waited a day or so.

16 Q. What about the potential
17 conflict with Major Conley coming
18 from out west?

19 A. That conflict never came up
20 until somebody talked about it much,
21 much later after the date. But I
22 don't see any conflict there with
23 Major Conley coming from the west.

24 Q. And you are certain that
25 you're not rationalizing your reasons

247

1 for objecting to Captain Ober's
2 behavior because it irritates you
3 that someone didn't come to you with
4 something that you thought could be
5 politically threatening to the
6 Department? You're not rationalizing
7 that?

8 A. I don't believe so.

9 ATTORNEY BAILEY:

10 I think she needs it
11 there. Would you kindly give
12 me an opportunity to confer
13 with my client for a moment?
14 I'll be right back in.

15 SHORT BREAK TAKEN

16 ATTORNEY BAILEY:

17 I have no further
18 questions. Do you have any
19 questions, Barbara?

20 ATTORNEY CHRISTIE:

21 Yes. I just have a
22 couple of areas that I would
23 like to clarify.

24 EXAMINATION

25 BY ATTORNEY CHRISTIE:

1 Q. Firstly, Colonel, I think you
2 had indicated to Counsel as to Coury
3 Seven that you wish to shed some
4 light on the occasion for generating
5 this particular e-mail to illustrate
6 its nonrelationship to Captain Ober.
7 Could you now so indicate, please?

8 A. Well, the exigent part was
9 certainly verbiage added. But the
10 real crux of this whole issue was
11 that at the --- I had only been the
12 Deputy Commissioner of operations for
13 a very short time, a couple of
14 months, in July. And during that
15 time, I had called the --- the troop
16 commanders on more than one occasion
17 direct. And that the July Arian
18 troop commanders conference, Major
19 Szupinka had mentioned to the other
20 area commanders --- and they had some
21 internal discussion about me calling
22 the troop commanders direct. And
23 they felt that I should be going
24 through them, as opposed to making
25 direct calls to the troop commanders.

1 That was brought to my attention, I
2 agreed with it. And I had meant to
3 bring it up there at the Arian troop
4 commanders conference about what my
5 operational position was on chain in
6 command. So it was strictly an issue
7 between Aerie commanders and trooper
8 commanders.

9 Q. And I would just suggest --- I
10 know you want to talk to me, but just
11 to keep talking to the camera, so
12 that we're not off of the videotape
13 deposition in my questions, if you
14 wouldn't mind. And the examples
15 you've given of exigent
16 circumstances, although not defined,
17 are examples that deal with a need
18 for urgent transmission of
19 information, such as the barricaded
20 man with hostage situation, and
21 Commissioner's immediate need for
22 information, Arian commander is not
23 available and so forth, it goes to
24 the troop commander. With regard to
25 the immediacy, I think you've already

1 indicated that you knew of no --- as
2 to the FBI probe, you knew of no need
3 for immediacy of reporting in that
4 particular situation. Is that a
5 correct understanding?

6 ATTORNEY BAILEY:

7 Objection to the form
8 of the question. You may
9 respond.

10 A. That's correct. I viewed ---
11 when I generated this document to
12 Arian troop commanders, it's
13 operations as opposed to
14 administrative issues, I viewed it as
15 more life threatening issues as
16 opposed to administrative issues.

17 Q. So would you view exigent
18 circumstances basically kind of as an
19 excuse to kind of pick and choose who
20 you want to go to with regard to
21 information, vis-à-vis someone in
22 your chain of command who perhaps you
23 don't, for whatever reason, want to
24 go to, as opposed to someone that you
25 like better or whatever and do want

1 to go to with information. Is that
2 within your definition of exigent
3 circumstances?

4 ATTORNEY BAILEY:

5 Objection to the form
6 of the question. With all due
7 respect, that one had three
8 paragraphs. You beat me. You
9 even beat me on that one,
10 Barbara. Anyway, I object to
11 the form of the question.

12 BY ATTORNEY CHRISTIE:

13 Q. The witness may answer the
14 question.

15 A. I guess it could be used that
16 way.

17 Q. But is that what you conceived
18 to be exigent circumstances, that you
19 can pick and choose just who you like
20 better to report it to?

21 A. No, you can't do that.

22 Q. And with regard to the
23 availability of then Major Conley, I
24 believe Counsel indicated that the
25 then Major might have been either

1 unavailable or perhaps potentially
2 involved because he came from the
3 west, as opposed to the east, as
4 opposed to the center of the state.
5 Are you aware at all in the answer to
6 your question of Counsel that
7 Colonel, then Major Conley, had
8 called the Plaintiff on the phone
9 prior to his reporting this
10 information of the FBI probe to
11 Lieutenant Colonel Hickes, and had
12 asked him basically if there was
13 anything that he should be aware of,
14 to which the Plaintiff replied no,
15 are you aware of that or were you
16 aware of that at the time that you
17 answered ---?

18 ATTORNEY BAILEY:

19 Objection to the form
20 of the question. You may
21 respond.

22 A. I somewhat recall it now that
23 you mentioned it.

24 BY ATTORNEY CHRISTIE:

25 Q. Okay. And if one is going to

1 be concerned about someone being at a
2 particular section of the state or
3 being at a particular command
4 position, would you not --- as being
5 an exigent circumstance, to not
6 include reporting to that person in
7 the chain of command, would you not
8 also expect to be consistent that the
9 Plaintiff would also consider --- or
10 that the reporter of that information
11 would also consider whether or not
12 the reportee, in this instance,
13 Colonel Hickes, had ever been in a
14 position to have been a deputy of
15 operations during the pertinent time
16 period of the FBI probe?

17 ATTORNEY BAILEY:

18 Objection. I'm sorry.

19 Are you finished?

20 BY ATTORNEY CHRISTIE:

21 Q. Just to be consistent, is he
22 going to be consistent, rather than
23 pick and choose who you want to give
24 information to? Was that a question
25 or a statement? Would you expect it

1 to just be consistent that one would
2 also give thought to the position of
3 the person to whom you report during
4 the entire time of the FBI probe?

5 ATTORNEY BAILEY:

6 Objection to the form
7 of the question. You may
8 respond, sir.

9 A. My overall opinion of the
10 exigent issue is that had Captain
11 Ober done his homework before he
12 knee-jerk reacted and went to Colonel
13 Hickes, there couldn't have even been
14 any perception of an exigent
15 circumstance.

16 ATTORNEY BAILEY:

17 Objection to the
18 witness' response.

19 BY ATTORNEY CHRISTIE:

20 Q. With regard to this decision
21 of the compensation reimbursement
22 board, Counsel had questioned you
23 with regard to whose decision or
24 whether there was a decision or an
25 attempt to take an appeal from the

1 board's determination of compensation
2 or reimbursement. To your
3 understanding, was this decision a
4 decision to take an appeal or a
5 decision to ask the board to reopen
6 the record to receive information
7 that they had not received through
8 the commonwealth advocate, Mr. Grab,
9 or elsewhere, such as an interview
10 from yourself, the individual who
11 denied the request in the ---
12 whatever, in the second place, I
13 guess, going through the chain of
14 command after Major Conley?

15 ATTORNEY BAILEY:

16 Objection to the form
17 of the question. You may
18 respond. Counsel, leading
19 questions are one thing. But
20 you may be setting a record.
21 I'd just ask if it's possible
22 to not lead.

23 ATTORNEY CHRISTIE:

24 Well, I believe we're
25 in a deposition, Counsel,

1 we're not in Court.

2 ATTORNEY BAILEY:

3 That's really not a
4 relevant issue. Anyway, I'm
5 objecting. You may ---.

6 ATTORNEY CHRISTIE:

7 And he is your deponent
8 at this point; is he not?

9 ATTORNEY BAILEY:

10 I'm objecting. You may
11 respond.

12 BY ATTORNEY CHRISTIE:

13 Q. Do you remember the question?

14 A. As I responded to Mr. Bailey's
15 question that I didn't feel there was
16 an appeal process available to the
17 Department, so I guess it was more in
18 terms of what can the Department do
19 to get its position on record.

20 Because here you have a board of
21 three people, meaning the PSTA, which
22 was Bruce Edwards, OA, which was Bill
23 Mullen, and PSP, which is Leonard
24 Washington, Mark Grab is the advocate
25 for the Commonwealth's side. I

1 wanted to make sure that the three
2 panel board had the information on
3 why I felt it necessary to say it
4 shouldn't be approved, what my
5 feelings was for rejecting it. You
6 had Colonel Hickes approving it. And
7 the board would have access to that
8 information through Mark Grab. But
9 who was going to give the board the
10 information on the things they should
11 consider on why it was initially
12 rejected.

13 Q. And have you, Colonel Conley
14 --- strike that, Colonel Coury, or to
15 your knowledge, Colonel Conley,
16 either been contacted for purposes of
17 this board, this consideration of
18 this request by this board, or even
19 been aware that this request was, in
20 fact, being considered by the board?
21 By the request, I mean the request
22 for compensation reimbursement.
23 Until after the board had acted, of
24 course.

25 ATTORNEY BAILEY:

1 Objection to the form
2 of the question. You may
3 respond.

4 A. I was never contacted by Mr.
5 Grab.

6 BY ATTORNEY CHRISTIE:

7 Q. So by that, were you ever ---
8 if you weren't contacted by Mr. Grab,
9 were you ever aware that the board
10 had even acted on these requests
11 until after the action had occurred?

12 A. No.

13 Q. And with regard to your
14 testimony that Colonel Hickes had
15 been interviewed or had been spoken
16 to by Mr. Grab, was it your
17 understanding that Colonel Hickes
18 approved the request for the hotel
19 and for the reimbursement of the
20 vacation day to a working day before
21 these things occurred or was it your
22 understanding that Colonel Hickes
23 basically had indicated that he
24 hadn't approved them beforehand, but
25 thinking back retroactively, he would

1 have approved it, that it would have
2 been okay with him, words to that
3 effect?

4 ATTORNEY BAILEY:

5 Objection to the form
6 of the question. You may
7 respond.

8 A. I thought that it was
9 retroactive, first of all. Secondly,
10 I had a position on how Colonel
11 Hickes could retroactively or even
12 proactively approve leave and a hotel
13 room for a member who actually wasn't
14 under his command, was under my
15 command. So I thought there was a
16 due process issue, if you will.

17 BY ATTORNEY CHRISTIE:

18 Q. Did you have any question at
19 all as to why an FBI investigation in
20 which Captain Ober was apparently
21 participating, a meeting concerning
22 that investigation could not be or
23 was not an FBI installation, as
24 opposed to a hotel?

25 ATTORNEY BAILEY:

1 Objection, please.

2 Objection not only to the form
3 of the question, but I'd also
4 like to state that --- maybe I
5 can save some time and just
6 object to this entire line of
7 questioning on various
8 grounds. But objection. And
9 objection to the
10 characterization of the
11 Counsel's testifying, as she
12 has been on a number of these
13 questions. I would object.
14 And you may respond, sir.

15 A. I think your questioning gets
16 back to what I had said earlier,
17 that, you know, I wanted the board to
18 have all the information on the
19 reasons why I did not think it was
20 appropriate to approve the leave day
21 or the hotel day. I think there was
22 a number of reasons --- other
23 alternatives available to Captain
24 Ober prior to resorting to going out
25 and renting a hotel room. Could have

261

1 met at the FBI office, could have met
2 at probably a library. There's
3 probably a lot of places you could
4 have met without going out and
5 renting a hotel room.

6 BY ATTORNEY CHRISTIE:

7 Q. And with regard --- I believe
8 Counsel had questioned you as to
9 would it not seem reasonable to you
10 that Captain Ober would not have
11 documented his comings and goings
12 with regard to meeting with the FBI
13 at the hotel, and documented that
14 contemporaneously or shortly after
15 those events had occurred. Do you
16 recall questions that Counsel asked
17 you to that effect, that wasn't it
18 reasonable if it was not to be found
19 out or to be confidential that the
20 Captain would not document those
21 events until some months later when
22 he made the request for leave
23 reimbursement, hotel reimbursement?

24 ATTORNEY BAILEY:

25 Objection ---.

1 BY ATTORNEY CHRISTIE:

2 Q. Do you recall questions to
3 that effect?

4 ATTORNEY CHRISTIE:

5 I'm only asking the
6 Colonel if he recalls
7 questions to that effect.

8 ATTORNEY BAILEY:

9 Objection, objection to
10 the characterization ---.

11 A. I recall the questions.

12 ATTORNEY BAILEY:

13 Sir, stop. Come one.
14 Let's go. We're going to play
15 by the rules here now.
16 Colonel, I respectfully
17 request --- you know what's
18 been going on here, that you
19 please don't jump in with an
20 answer before I have an
21 opportunity to rejoin, please.
22 I object. I object to the
23 characterization, and I object
24 to the form of the question.

25 BY ATTORNEY CHRISTIE:

1 Q. Colonel, would it not seem
2 reasonable that if Captain Ober is,
3 in fact, going to meet with the FBI,
4 with the approval of Colonel Hickes
5 at a hotel on leave time that he's
6 later going to reclaim as work time,
7 that even if he didn't document it to
8 anybody else, that he would have at
9 least contemporaneously documented
10 this to Colonel Hickes?

11 ATTORNEY BAILEY:

12 Objection. Objection
13 to the form of the question.
14 Objection to the
15 characterization. You may
16 respond.

17 A. I'm surprised at the fact that
18 a man of Captain Ober's caliber, of
19 his ability, his knowledge of rules
20 and regulations, his attention to
21 detail, that a man with all those
22 talents didn't have a better paper
23 trail of what all took place during
24 that period of time, from the time
25 the FBI called him until the meeting

1 with Colonel Evanko.

2 BY ATTORNEY CHRISTIE:

3 Q. And would you agree, Colonel
4 Coury, that that paper trail could
5 have been committed to paper in memos
6 from Captain Ober to Colonel Hickes
7 during the events or at or about the
8 time of the events in question?

9 ATTORNEY BAILEY:

10 Objection to the
11 characterizations. Objection.
12 And objection to the form of
13 the question. You may
14 respond, sir.

15 A. I believe there could have
16 been a paper trail generated.

17 BY ATTORNEY CHRISTIE:

18 Q. Have you seen any
19 documentation from either Colonel
20 Hickes or from Captain Ober at any
21 point to date in this lawsuit
22 indicating that Captain Ober did, in
23 fact, contemporaneously document
24 those events, if to nobody else, to
25 Colonel Hickes?

1 A. I have not seen any paper
2 trail. I've only by attending some
3 of these --- Colonel Conley's
4 deposition, I guess, heard about a
5 few documents being generated.

6 Q. But, of course, if there were
7 documents to that effect generating
8 this paper trail, I would assume that
9 those --- would you not assume that
10 those documents would have been
11 produced to us pertinent to a defense
12 request for production of documents
13 by now?

14 ATTORNEY BAILEY:

15 Objection to the form
16 of the question.

17 ATTORNEY CHRISTIE:

18 That's a terrible
19 question. I'll withdraw that
20 question. I have no further
21 questions.

22 ATTORNEY BAILEY:

23 I have no further
24 questions.

25 VIDEOGRAPHER:

266

1 It is now 4:03. The
2 deposition of Lieutenant
3 Colonel Thomas J. Coury is
4 completed. Suspending video.

5 * * * * *

6 VIDEOTAPED DEPOSITION CONCLUDED AT

7 4:03 P.M.

8 * * * * *

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF DAUPHIN)

C E R T I F I C A T E

I, Vivian Gratz, a Commissioner of Deeds in and for the Commonwealth of Pennsylvania, do hereby certify:

That the witness was hereby first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was taken stenographically by me and reduced to typewriting, and constitutes a true and correct record of the testimony given by the witness.

I further certify that the reading and signing of said depositions were ~~not~~ waived by counsel for the respective parties and by the witness.

I further certify that I am not a relative, employee or attorney of any of the parties, nor a relative or employee of counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 25th day of April 2002.

Vivian Gratz
 VIVIAN GRATZ
 Commissioner of Deeds
 Commonwealth of Pennsylvania
 My Commission Expires Nov. 7, 2005

•PITTSBURGH, PA

•CLEARFIELD, PA

•STATE COLLEGE, PA

•HOLLIDAYSBURG, PA

•ERIE, PA

•OIL CITY, PA

•HARRISBURG, PA

SARGENT'S
 COURT REPORTING
 SERVICE, INC.

210 Main Street
 Johnstown, PA 15901
 (814) 536-8908

•INDIANA, PA

•GREENSBURG, PA

•PHILADELPHIA, PA

•SOMERSET, PA

•WILKES-BARRE, PA

•CHARLESTON, WV

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

Plaintiff

vs.

PAUL EVANKO, MARK
CAMBELL, THOMAS COURY,
JOSEPH WESTCOTT,
HAWTHORNE CONLEY

Defendants

1: CV- 00-0084

(Judge Caldwell)

:JURY TRIAL DEMANDED

COPY

DATE:

March 6, 2002

PROCEEDINGS:

Video Deposition of
Major Phillip DeWire

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esq.
4311 N. 6th Street
Harrisburg, PA 17110

For the Defendants

Joanna Reynolds, Esq.
Barbara Christi, Esq.
1800 Elmerton Avenue
Harrisburg, Pa 17101

1 MR BAILEY: Ladies and gentlemen as we
2 begin let me advise everyone that there is a tape
3 recording device in operation.

4 TONY MARCECA: Good morning ladies and
5 gentlemen. Today is March 6, 2002. Be advised
6 the video and the audio is in operation. My name
7 is Tony Marceca. My address is 2219 Dixie Drive,
8 York Pennsylvania, 17402. I've been contracted
9 out by PR Video to be the video operator for this
10 deposition. The case In The United States District
11 Court for the Middle District of Pennsylvania. The
12 Captain in this is
13 1: CV-01-0084. The title is Darrell G Ober plaintiff
14 vs. Paul Evanko Et al. The time is now 9:16 am,
15 and would the witness, Major Philip DeWire, please
16 raise his right hand and swear after me.

17 MR BAILEY: That's DeWire.

18 TONY MARCECA: Oh, I'm sorry DeWire.
19 D-E-W-I-R-E. Do you swear to tell the truth, the
20 whole truth so help you God?

21 MAJOR DEWIRE: I do

22 TONY MARCECA: Mr. Bailey would you
23 please take a sound check around the room?

24 MR BAILEY: Yes. My name is Don Bailey. I
25 represent Darrel G. Ober who's the plaintiff in this

1 matter. If the other counsel and attendants could
2 identify themselves giving their address and
3 telephone number for the record please.

4 JOANNA REYNOLDS: My name is Joanna
5 Reynolds. I'm the assistant counsel with the
6 department and I represent the State Police
7 defendants in this matter. My address is 1800
8 Elmerton Avenue, Harrisburg PA, 17110. My
9 phone number is 717-783-5568.

10 BARBARA CHRISTI: My name is Barbara
11 Christi, Chief Counsel, Pennsylvania State Police.
12 Same address and telephone number as those
13 given by Assistant Counsel Reynolds.

14 MR BAILEY: Thank you ladies. Let me ask.
15 Counsel usual stipulation objections, except less
16 then the form, reserved till the time of trial. Is
17 that acceptable?

18 BARBARA CHRISTI: Yes

19 MR BAILEY: Major DeWire as indicated my
20 name is Don Bailey. Just a few instructions or
21 introductory remarks here before we begin. This is
22 a video deposition. We are required to maintain a
23 copy of the deposition here. It's here for you to
24 come and view at your leisure. You're allowed to
25 do that and naturally we would accommodate you.

1 I assume the attorneys here are representing you
2 here today. I don't know that. I'm just gonna
3 conduct myself as if they do. I assume they do. So
4 they're going to be getting a copy. You can work
5 through them if you want to get a copy. They're
6 going to be getting a copy for the defendant. So
7 obviously you're not a defendant in this matter.
8 You are in fact a witness here and I'm going to be
9 asking questions and in that regard. If at some
10 time during the process you have a desire to ask
11 me where I'm going with questions or what I mean
12 by a question for any reason curiosity or confusion
13 makes no difference. I want you to feel free to do
14 that and that offer extends to opposing counsel as
15 well. I don't mind in doing that. I'm not interested
16 in trick questions or distorting the record. We
17 want to get all the facts, get your complete
18 response to questions, and build a good fact
19 record. If at anytime you need a break or for some
20 reason counsel would want to talk to you or you'd
21 want to talk to them. I don't like to yield when
22 there's a question on the table, but I probably
23 would in most cases. A break for any other reason
24 any other time is fine. Just request it, okay? Sir,
25 do you have any questions for me before we begin?

1 MAJOR DEWIRE no.

2 MR BAILEY: Major DeWire do you mind if I
3 just refer to you as Major?

4 MAJOR DEWIRE: That will be fine.

5 MR BAILEY: Okay. Major can you very
6 quickly tell us how you where employed and in
7 what capacity with the Pennsylvania State Police?

8 MAJOR DEWIRE: I'm employed by the
9 Pennsylvania State Police, as the Director of the
10 Bureau of Liquor Controls Enforcement.

11 Q: And how long have you held that position?

12 A: Since July of 2000.

13 Q: Now can you just give us a brief, I think we
14 all pretty much know what the bureau does, but
15 give us a brief description of the bureau
16 organizationally. By that I mean some of the
17 divisions, how many people you have in your
18 bureau.

19 A: The bureau consists of two divisions. One
20 being the administrative division which is under
21 the guidance of Captain Leonard McDonald. The
22 other is the administrative division, which is under
23 the supervision and direction of Captain Darrell
24 Ober.

25 Q: Now. What position did you hold with the

1 Pennsylvania State Police before you assumed the
2 Directorship of LCE?

3 A: I was a Captain and my assignment was
4 the Troop Commander for the Troop AP in
5 Montoursville.

6 Q: Around July of 2000 you became Director
7 of LCE. Is that correct?

8 A: That's correct.

9 Q: How long have you known Darrell Ober?

10 A: I met Darrell Ober when I was promoted to
11 Captain and transferred to departmental
12 headquarters and placed in charge of a staff
13 inspection unit. I'm going to make a guess as to
14 what year that was, but I would say that was
15 probably in '94.

16 Q: Now do you have a recollection of when
17 Darrell Ober came to LCE?

18 A: Darrell was in LCE before I arrived.

19 Q: What was he doing there when you
20 arrived?

21 A: When I arrived he was, as he is now, the
22 Director of the Administrative Division.

23 Q: Let the record show I'm being hailed off
24 stage here. I need a copy of the amended
25 complaint. I need a copy off the computer. Now he

1 was in charge of Administration you say?

2 A: The Administrative Division.

3 Q: The Administrative Division. Now during
4 the process of assuming the Directorship of LCE
5 did you ever have opportunity to either promote or
6 I guess technically it would be recommend people
7 for promotion within the bureau?

8 A: I think the opportunity was present to do
9 things of that nature.

10 Q: And that's consistent or normal. I mean
11 that's a part of the command function. I would
12 assume that for time to time in any organization
13 like the Pennsylvania State Police one of your
14 duties is to evaluate personnel and to recommend
15 personnel for promotion. Is that correct?

16 A: That's correct.

17 Q: Major you don't have the authority to
18 promote someone yourself within LCE. That's
19 something that is done according to procedures
20 and policies that are governed by regulation and
21 practices within the department as a whole. Is
22 that correct?

23 A: That's correct.

24 Q: So you don't have the power. You can't
25 just, let's say you have someone who's a real

1 achiever and you can't say to that person, let's say
2 you have a sergeant somewhere a corporal, a
3 trooper, lieutenant, whatever. You can't just say
4 you know "Jane or Joe" or whatever "you've been
5 working doing just an outstanding job for a couple
6 years I'm promoting you." You don't have that
7 kind of authority. Do you?

8 A: Assuming we're talking about enlisted
9 members of the State Police, I do not.

10 Q: Okay. Now, do you have the authority to
11 promote on the spot? For example, civilian
12 employees?

13 A: No

14 Q: Do you have the power to promote on the
15 spot an officer who's within your command?

16 A No.

17 Q: Okay. How are promotions handled within
18 the Pennsylvania State Police? If you'd just give
19 me a general description.

20 A: Promotion for enlisted members is
21 accomplished through testing procedures and then
22 banding or grouping individuals. Depending on
23 what rank we're discussing it's at the
24 Commissioners discretion then.

25 Q: So I am going to assume that as a

1 Commander you would hopefully, as all
2 Commanders like let's say at your level would
3 have, you would have a significant impact on
4 promoting someone in your command. Let me give
5 you a little offer about where I'm coming from from
6 that. I'm just trying to learn from you what effect,
7 in your capacity as a Commander, what effect you
8 would have on promoting someone or
9 recommending someone. Now I'm sitting here
10 because I've never walked in your shoes, and I
11 don't know how the State Police actually do this.
12 You know, there's objective and subjective rating
13 criteria and that as someone who's a Commander
14 you would have an input in the evaluation process
15 that would include the opportunity to recommend
16 somebody for a promotion. But that ultimately,
17 that decision is not in your hands. It's somewhere
18 above you and I'd like you to respond to the
19 question of: What roll do you as a Commander
20 have in the promotion of personal who are within
21 your command and inferior to you in rank?

22 A: Often times its very little roll. It depends
23 upon the direction that the front office or the
24 Commissioner wants to take. It may well be that
25 and individual I consider worthy of promotion and

1 would recommend for promotion, but that does not
2 seem to fit in to where the administration desires
3 the promotion process to go. In that case I have
4 very little input. If they have no predetermined
5 direction or agenda that they want to go then my
6 input and recommendations I think have more
7 weight then.

8 Q: In a situation all things being equal where
9 those above you in the chain of command have no
10 particular interest. Don't have an eye on a position
11 or eye on a person for a position. All things being
12 equal it's fair to say then that in that kind of
13 situation your recommendation, you would assume
14 would carry significant weight. In a situation like
15 that if you wanted someone for a position.

16 A: I would assume that. Yes

17 Q: Alright. And in a situation where there
18 was opposition to a person for a particular position
19 and you were aware of that to some extent or some
20 degree it's fair to say because you do not control
21 the process that your recommendation may not
22 have that much impact. I realize that's sort of a
23 common sense basic question. But under those
24 circumstances your recommendation,
25 circumstance where those above you who control

1 the process ultimately don't want someone to be
2 promoted, chances are they're not going to be
3 promoted. Is that fair to say?

4 A: I think that's fair.

5 Q: Major DeWire did you ever indicate to
6 Darrell Ober, meaning him absolutely no
7 disrespect or no dissection, that you had decided
8 that it was perhaps useless or counter productive
9 and you're going to have to explain your thought
10 process if the answer to this is yes. But did you
11 ever indicate to him that he would not be
12 recommended for promotion because it would be a
13 useless or counter productive gesture something of
14 that sort?

15 A: I don't think I ever indicated to him that I
16 would not recommend him for promotion. I have
17 indicated to him that...let me step back a moment.

18 Q: Explain in your own words. Go ahead. I'm
19 sorry

20 A: One of the legs of promotion or the arms of
21 promotion is in making the individual that I feel
22 should be promoted present or visible to the
23 Commissioner or the front office. So they can
24 evaluate how he performs and recognize that
25 individual. Now that is done through a variety of

1 ways. One of the ways would be, for example
2 would be to send them over representing the
3 bureau in circumstances where there would be
4 other Commanders and the Commissioner present.
5 I have in a conversation indicated to Cpt Ober that
6 I felt that that exercise would not be very valuable
7 in gaining his promotion.

8 Q: Why?

9 A: Because of the atmosphere surrounding
10 Captain Ober and his relationship with the
11 Commissioner, as I understood it to be. And that
12 was that Captain Ober had initiated a lawsuit
13 against the Commissioner.

14 Q: Are you making reference to this lawsuit?

15 A: Yes

16 Q: Are you referring oh, I'm sorry. So your
17 testimony here today is that this conversation that
18 you shared with Captain Ober took place after this
19 particular lawsuit was filed?

20 A Yes.

21 Q: And let me, before this lawsuit was filed do
22 you have a recollection of any other legal actions in
23 which Darrell Ober was involved with the
24 department and/or the Commissioner?

25 A: There were, as I understand it a series of

1 legal actions. I am not that up on the technical
2 terms of it involving Captain Ober and the
3 department. One of them being a motion he had
4 filed to over turn or declare nol and void a transfer
5 of Captain Ober to Greensburg. I believe. There
6 was some legal action filed as a result of that, and
7 there may have been other legal action filed after
8 that that may have ended up dismissed. I'm not
9 that certain of that.

10 Q: Well. Why did you assume and if you
11 didn't assume what was it based on that Mr. Ober
12 shouldn't be sent to or provided the opportunity to
13 participate in activities that would make him "
14 visible to the front office"?

15 A: When I took over the bureau I was aware
16 that there was some tension existing between
17 Captain Ober and the front office. My plan at that
18 time was to minimize the contact between the two,
19 because common sense told me that it would not
20 be a good situation for either individual to be in too
21 direct of contact.

22 Q: So you felt that this was something that
23 was important to the front office? Let's explore
24 this. You felt that this was important the front
25 office or that it was important to Darrell Ober or

1 that it was important to you? That your best
2 interest or Darrell's best interest, or the front
3 office's best interest would be served by not
4 making him available. Could you sort of weigh
5 them or compare them. Who's interest were you
6 protecting and why?

7 A: The interest that I was protecting was the
8 interest of the front office and the interest of
9 Captain Ober.

10 Q: Okay

11 A: I saw no benefit for me.

12 Q: Okay. Now with that eliminated let's talk
13 about what. I anticipated I think your response,
14 but let's talk about those two things now. You're
15 aware of tension; those are the word that you used.
16 Now I don't in fairness to you whether you said you
17 were aware of it, whether there was some in of
18 objective thing, or whether this was something you
19 just assumed on your own. So that's where I'm
20 gonna go now. What, I mean you're aware there's
21 a lawsuit that's filed. Is that correct?

22 A: That's correct.

23 Q: Okay. Joanna could you hand me, yes.
24 Thanks. Thank you very much

25 JOANNA REYNOLDS: You're welcome.

1 MR BAILEY: You are aware that there's this
2 lawsuit Darrell filed, and we're talking about the
3 current lawsuit in which Colonel Evanko is a
4 defendant, right?

5 A Yes.

6 Q: We're not talking about, and I think you
7 responded to an earlier question, we're not talking
8 about an issue involving a transfer which you
9 thought was Greensburg. The point is we're not
10 talking about that. We're talking about this
11 current federal lawsuit, right?

12 A Right.

13 Q: When did you learn about the current
14 federal lawsuit?

15 A: I can't give you a specific date. It was after
16 I was down here. Captain Ober advised me that he
17 would be filing that action.

18 Q: Okay. Have you ever seen the lawsuit
19 before today?

20 A No. I don't think so.

21 Q: Okay. So you've never read it. You don't
22 know what goes into it?

23 A: No. I'm not aware of that

24 Q: Alright. So how extensive was the
25 discussion that you had with Captain Ober?

1 A: The discussion that I referred to relative to
2 keeping Colonel Evanko and Captain. Ober out of a
3 face to face situation is that what you're referring
4 to?

5 Q: Why would you want to keep them out... I
6 mean he is a Commissioner and Captain Ober is a
7 Captain. They're both hopefully, Hopefully, mature
8 responsible individuals. Lawsuits don't make for
9 good relationships when you sue somebody
10 obviously, but they are adults. They can carry and
11 use weapons, enforce the laws, administer the rule
12 and regulations, and enforce the laws of the State.
13 Why, I'm gonna assume that if they're in a room
14 and Colonel Evanko says to Captain Ober "
15 Captain I'd be grateful if you'd go over there" and
16 say it in a polite way "and sit down in the corner
17 and be quiet." I'm gonna assume Captain Ober... I
18 was in the Army my commanding officer told me to
19 do something I did it. Whether I agreed or not I did
20 it. I would assume that if that situation occurred
21 the boss is Colonel Evanko. There's certainly no
22 question about that, right?

23 A: That's correct.

24 Q: What would give you cause to think there
25 might be a problem with having those two together

1 in a room to avoid, your word was I think a
2 confrontation? I'm not sure what your words were,
3 but what were you afraid of?

4 A: I don't know that I could characterize it as
5 being afraid of something. What I was striving to
6 do was to utilize a cooling period. A cooling off
7 period where tensions would be lessened between
8 the two. If in fact they existed and it would be
9 logical to assume they did. Given that Captain.
10 Ober had filed a lawsuit against Colonel Evanko.

11 Q: But did that concern or effect decisions
12 that you made about who to recommend for
13 promotion?

14 A: No

15 Q: You knew that if you did not provide an
16 opportunity for Captain. Ober, for one of a better
17 description, strut his stuff to be visible and appear
18 that chances are he's not gonna be promoted,
19 right?

20 A: I'm not sure that that would have stopped
21 him from being promoted or denied a promotion
22 opportunity.

23 Q: But you also weren't sure that he would be
24 denied a promotional opportunity because he sued
25 the Commissioner. Is that correct?

1 A No. I'm not certain that he would have
2 been. So that is correct.

3 Q: Would you deny someone a promotional
4 opportunity if they felt compelled to confront you
5 in a legal way? Would you like to think that you
6 would not deny them a fair opportunity, simply
7 because they legally disagreed with you?

8 A: That's a pretty broad statement.

9 Q: I think it's pretty specific, but if it's broad
10 that's okay. I was wondering how you would
11 react.

12 A: Well I'm talking levels of lawsuit. There are
13 people who have initiated actions against me that I
14 have in fact encouraged, because it would bring
15 about a resolution to a problem that existed. I
16 have been aware of lawsuits filed that almost
17 become a personal nature. When it becomes a
18 personal nature I think it's probably
19 understandable to assume that there would be
20 some animosity attached to it. I would expect it.
21 So in response to your question, if it were one of
22 those minor events that I've discussed I would
23 certainly not have any objection to promoting that
24 individual. If it where a major event, it became
25 personal, then I would have to seriously look at

1 whether the fact that this thing became a personal
2 event whether that would have clouded the
3 judgement of the individual to make an
4 assessment in that case.

5 Q: Well in this case is it fair to say that you
6 thought that Mr. Ober's actions might cloud the
7 judgement of the Commissioner? Is that what
8 you're telling us?

9 A No. What I am saying is that the
10 Commissioner may have looked upon Captain.
11 Ober and said that his judgement to proceed with
12 this may be indicative of someone I don't want to
13 promote.

14 Q: For that reason your telling us that you
15 didn't make Captain. Ober available for
16 opportunities that might enhance promotional
17 chances. Is that right?

18 A: I didn't feel those opportunities would
19 enhance Captain. Ober's promotional chances.

20 Q: You did think they would do him any good
21 did you?

22 A: That's correct. I did not think they would.

23 Q: Because you didn't think they would do
24 him any good you didn't put him in a position to
25 number one be exposed to the front office, as you

1 put it, and secondly you felt it would be best to
2 avoid... I don't know what word you used, and I
3 use the word confrontation. I think you sort of felt
4 that was maybe too strong. But that there wasn't
5 much to be gained by having those two together so
6 to speak. I don't know quite how to describe it.
7 I'm just going from what you told me.

8 A: I think you've described it pretty well. I
9 saw very little to be gained and I saw the possibility
10 of some harm to be done.

11 Q: That begs a question. What does that say
12 about your opinion of Colonel Evanko? I don't
13 understand. He's the Commissioner of the State
14 Police. He has duties and responsibilities to his
15 job. You seem to be describing a conclusion you
16 reached on your part, because you didn't feel that
17 Colonel Evanko could be objective in evaluating
18 Captain. Ober. Now remember you told us you
19 never read this lawsuit, never saw it. So I am
20 gonna come back and I'm gonna ask you what you
21 did know underline situation. Right now I'm going
22 to finish exploring your reasoning and thought
23 process as to why you felt so strongly that had to
24 be avoided. The reason I ask that, the reason I'm
25 asking these questions is we're talking about a

1 man's career. We're talking about his right of pay.
2 We're talking about his future his family. Can you
3 tell me why you would reach that conclusion and
4 not counsel Captain. Ober about it or maybe you
5 did. Did you counsel Captain. Ober about this?

6 A: About?

7 Q: I'm not gonna recommend you or give you
8 this opportunities.

9 A: No. I never said that I would not
10 recommend Captain. Ober for promotion, because
11 that would not be correct. I would recommend him
12 based on his performance.

13 Q: Alright let's stop there.

14 A: Okay

15 Q: Alright you would recommend him based
16 on his performance. Now obviously what that
17 means is... How many years you been in
18 Pennsylvania State Police?

19 A: I'm in my 35th.

20 Q: So you provided many many years of
21 service. Is it fair to say you have a positive,
22 obviously you do if you describe in your word... I'm
23 trying to ask a silly question, forgive me, but I
24 mean I got to do this job here. Obviously you have
25 a positive view on Captain. Ober based on his

1 performance and all things being equal. You
2 would recommend him or he's someone who you
3 feel can make a very positive contribution to the
4 State Police. I like you to describe it in your own
5 terms if you would please.

6 A: I consider Captain Ober to be an individual
7 that I would seek out if I were placed in charge of
8 the bureau, and try to recruit him to be there.

9 Q: So that means that this is a man that you
10 have a high opinion of and you feel that he can, he
11 has the ability and the qualifications to serve the
12 Pennsylvania State Police well. Is that fair to say?

13 A: That accurate yes.

14 Q: What's happened to his career?

15 A: You're asking me what has happened?

16 Q: Yes sir. You're his Commander and I want
17 an honest opinion from you. I want to know what's
18 happened to his career. You did not put him in a
19 position to be promoted, and the bottom line
20 question, and you've explained an awful lot as to
21 why you didn't do. That yet you have a high
22 opinion of Captain Ober and feel he's someone that
23 you'd seek out for these kind of things. Obviously
24 you're a pretty fine individual. I mean it comes
25 through. Obviously you bare absolutely no malice

1 or ill indention towards Captain. Ober that comes
2 through. Now I'm asking you a different question.
3 I'm getting away from Major DeWire's personal
4 opinions. Observing all the things that go on
5 around you what's happened to Captain. Ober's
6 career in the Pennsylvania State Police? Good or
7 bad, maybe nothing's happened, but let's hear
8 what you have to say.

9 A: Captain. Ober was definitely on a fast track
10 through the ranks to where he currently is. By
11 the same token once you achieve the rank that he
12 is the career opportunities to advance are not there
13 in the same quantity that they are with the lower
14 ranks. Captain. Ober's career has hit a roadblock
15 and I feel that road block in some part is due to the
16 current legal situation between the Commissioner
17 and Captain. Ober. Now that's my opinion.

18 Q: Yes sir. That's what I'm after and I'm
19 grateful to you. That's all I can ask of you.
20 Alright, let's talk about that for just a little bit.
21 Based upon your knowledge Captain. Ober filed
22 the current lawsuit against the Commissioner after
23 he had already been assigned to LCE. Am I correct
24 about that?

25 A: Yes

1 Q: And matter of fact, although there's not a
2 date on here, I believe this lawsuit was filed on or
3 about January of the year 2001. Am I correct with
4 that Darrell? It was January 16th? Am I correct?
5 Thank you, sir. Okay on or about January 16th
6 2001 Darrell files this lawsuit. You may want to
7 take... As a matter of fact I want to request a five-
8 minute recess. Tony I'd like to suspend for five
9 minutes. And I would respectfully ask you to
10 review that and read that lawsuit, okay?

11 A: Okay

12 TONY MARCECA: The time is 9:54 and we are
13 now suspending.

14 MR BAILELY: My tape recorder's running,
15 Tony.

16 TONY MARCECA: It's 10:10 am and we're
17 continuing the deposition with Major Phillip
18 DeWire, on March 6, 2002.

19 MR BAILEY: Okay Major you had had the
20 complaint there and an opportunity to look at it.
21 I'm going to, I might give you just a little bit of a
22 background of some of the allegations. Remember
23 that these are allegations that are made in this
24 particular case. You shouldn't except any of the
25 allegations as fact, they're allegations. They're no

1 going to be proven unless until a fact finder,
2 presumably a jury passes judgement on them. Did
3 you at sometime ever hear that Darrel Ober had
4 run a file of the Commissioner because he had not
5 handled one of his duties properly or anything like
6 that?

7 A: Yes I did.

8 Q: Where did you hear that?

9 A: I'm not sure where I first heard it, but
10 likely I would say rather confidently it was Major
11 Thomas Williams.

12 Q: Describe for us what Major Williams said.

13 A: I think that Major Williams outlined to me
14 briefly that Captain Ober had gotten involved in a
15 situation where there was an allegation of buying
16 appointments to the State Police and that this
17 information for one reason or another did not get
18 to the Commissioner. I think the main reason is
19 that it was stated that it was to be confidential for
20 Captain. Ober, as I understand. So Captain. Ober
21 had apparently passed the information to one of
22 the Deputy Commissioners, Lt. Colonel Hickes.
23 Subsequent to that time, sometime after that the
24 information was revealed to the Commissioner and
25 that had expressed his displeasure with the way

1 that information got to him and the timeliness of it.

2 Q: Did Major Williams ever indicate there was
3 a... this was a FBI investigation not a State Police
4 investigation?

5 A: Yes he indicated to me that the information
6 apparently originated from an investigation by the
7 FBI into corruption in Western Pennsylvania.

8 Q: Did Major Williams ever indicate that the
9 FBI confidentiality concern?

10 A: He indicted, as I recall, he indicated to me
11 that there was a request for confidentiality, but at
12 some point I was presented with conflicting
13 statements on that. In one case they maintained
14 the FBI had requested confidentiality, and on
15 another that there had been no such request for
16 confidentiality.

17 Q: As understand your testimony was it
18 Major Williams that had indicated that there was a
19 FBI request for confidentiality?

20 A: I can't say that I have a specific recollection
21 of him saying that.

22 Q: Do you recollect who had indicated that
23 there was a FBI interest in confidentiality?

24 A: I don't. Once again I don't have that
25 specific recollection.

1 Q: That's fine. Do you recollect what the
2 source of the information was that you indicated
3 that you had received conflicted information? Do
4 you recollect the source of the information that
5 there was not a FBI request for confidentiality? Or
6 there may not have been. Whatever the
7 circumstances were described to you. Do you
8 remember who that came to you from?

9 A: That may have come to me through
10 Captain. Ober.

11 Q: When did Mr. Williams talk to you about
12 this?

13 A: It was an ongoing thing. He was the area
14 Commander which placed him in command
15 ultimately of the area in which my troop was
16 located. His office was based and we would have
17 frequent conversations.

18 Q: Can you tell us when in time that
19 conversation with Mr. Williams may have been?

20 A: When you say that conversation?

21 Q: Well you had some conversations about
22 this pickle that Ober was in with the
23 Commissioner. Was Williams doing an
24 investigation at that time or was this just a
25 conversation you had?

1 A: We had many and varied conversations.
2 The first would have been prior to the assignment,
3 I believe, of Major William to the investigation.

4 Q: Was it on or about that time that you were
5 the impression, at least, that there was
6 confidentiality request by the FBI?

7 A: It would have been during those
8 conversations that that information came out.

9 Q: Did Mr. Williams? Did Major Williams ever
10 indicate anything to the contrary? You said it may
11 have been Mr. Ober who indicated that there may
12 or may not have been a FBI request for
13 confidentiality. I'm not going to question that. I
14 mean it's your recollection that counts, but what
15 I'm is about Mr. Williams. Did Mr. Williams
16 indicate that he felt there was not a FBI request for
17 confidentiality? I'm not implying that there was.
18 I'm just asking what you recollect.

19 A: Yes, when you say ever, yes.

20 Q: Did Mr. Williams ever indicate that the FBI
21 had a concern that higher ups in the Pennsylvania
22 State Police may have been involved in the alleged
23 public corruption?

24 A: Major Williams told me that the
25 information leading to this investigation was as a

1 result of some wiretaps. An exchange on one of
2 the wiretaps indicated that this reach to the, I
3 think the quote was "the highest levels of the State
4 Police".

5 Q: Do you remember if Mr. Williams ever
6 indicated to you that that wiretap information also
7 expressed information. You know that it contained
8 information that the Governor's office might be
9 involved? I'm not saying they were. I believed they
10 have been absolved. I think everyone agrees that
11 they were not. But the question is what was
12 discussed at the time and what Major Williams
13 may have known or thought at the time. So that is
14 the question, if he ever indicated anything about
15 the Governor's office. That's the question.

16 A: I don't recall the Governor's office
17 specifically being named.

18 Q: But it's fair to say, as a State Policeman,
19 when Major Williams expressed this opinion to
20 you, you know this was something that would be of
21 concern. Because you are a member of an
22 outstanding organization it would be a matter of
23 concern that something like that could be true.
24 Not that either one of you would believe it. I don't
25 assume that Major Williams expressed any

1 personal opinion about it, but he did indicate that
2 there was this information in a wiretap. Is that fair
3 to say?

4 A: The information you're discussing is that it
5 may have involved someone at the highest levels of
6 the State Police?

7 Q: yes

8 A: Yes that's fair to say.

9 Q: Sir, better then thirty years at the
10 Pennsylvania State Police? Does the FBI have any
11 right to give the State Police orders or directions on
12 an investigation? With all due respect to them and
13 their great reputation. The point is does the FBI
14 supervise, control, or direct the activities of the
15 Pennsylvania State Police?

16 A: They do not.

17 Q: If the FBI is working on something, an
18 investigation of some sort, and the Pennsylvania
19 State Police are working on an investigation of
20 some sort, the idea is, in a proper situation, the
21 idea is they would work together and cooperate in
22 the interest of furthering the goals of law
23 enforcement in the United States. Isn't that
24 correct? In other words it's a mater of comity,
25 cooperating, and working together. Is that correct?

1 A: That's correct.

2 Q: Now if a Pennsylvania State Policemen in
3 an official capacity is communicating with the FBI.
4 That Pennsylvania State Policemen has to exercise
5 and normally would exercise their own judgement.
6 They don't take orders from the FBI. Is that fair to
7 say?

8 A: That's correct.

9 Q: Is it your understanding then that what
10 was happening here was that someone was
11 questioning Captain. Ober because he made a
12 decision on how to handle this information that did
13 not include going directly to the Commissioner and
14 telling him or what was the beef? I'm asking that
15 sincerely. What was the beef, the problem? He's
16 doing a job and he makes a judgement. What was
17 the beef? What was he suppose to do?

18 A: I think that the beef is the suggestion that
19 the Commissioner might have been involved in
20 some type of corruption.

21 Q: Can you hold on just one second? Thank
22 you; let's explore that a little more. The beef is
23 that Mr. Ober apparently did not reject out of hand
24 even a scintilla of a possibility that Commissioner
25 Evanko could be aware of or involved in something

1 wrong and didn't go tell him about the FBI
2 inquiries. Is that the beef?

3 A: That's what I would assume it to be.

4 Q: Thirty years in the Pennsylvania State
5 Police. I know, cause I've dealt with it on the other
6 side, that the Pennsylvania State Police do
7 outstanding investigatory work in your division.
8 LCE gets involved in investigations, don't they?

9 A: We do yes.

10 Q: Is it proper to tell the target of an
11 investigation they're being investigated? Like
12 maybe they're being wiretapped, they're followed or
13 served. I'm sure it's a very stupid question, but
14 for the record. Is it proper to tell a target that
15 they're being investigated?

16 A: No it is not.

17 Q: Is it proper to tell a potential target that
18 they're being investigated?

19 A: No

20 Q: Why not sir?

21 A: Because in telling a potential target that
22 they're being investigated you may effect the
23 ultimate outcome of any investigation. If they're a
24 potential target, the definition of potential to me
25 means the may very well be a target.

1 Q: If you don't know should you take a
2 chance?

3 A: I think at that stage if you don't know you
4 air on the side of not telling. If it's such a thing as
5 an air.

6 Q: Do you know when Mr. Williams. Did you
7 become aware at some point that Mr. Williams
8 was, for one of a better word? I was corrected by
9 Captain. Skurkis yesterday. I'm gonna use his
10 words, was assigned to be the investigator of. I'm
11 just going to simply reefer to it as the Ober
12 incident. I don't what else to call it, but the Ober
13 handling let's say of the FBI inquiry. I don't know.
14 Did you at some point learn that Mr. Williams had
15 been assigned to investigate Mr. Ober?

16 A: I learned that Major Williams and Major
17 were co-assigned.

18 Q: Do you remember when you learned that?

19 A: No I don't.

20 Q: Did they come and interview you and talk
21 to you about Mr. Ober?

22 A: No.

23 Q: At the time that you... The events that
24 we're talking about i.e. the conversations that you
25 had with Major Williams occurred in the year

1 2001. I'm correct about that right?

2 A: No I would say not. Majority of them
3 occurred in 2000 prior to my transfer down here.

4 Q: Where were you at the time that they
5 occurred? I need to stand corrected you're
6 absolutely right. I'm thinking I got myself a year
7 ahead. If we filed the complaint later it would have
8 been. In fact let's lay it for the sake of the record.
9 Let me get myself straightened out okay?

10 A: Okay

11 Q: It is my understanding and if you happen
12 to know any facts to the contrary I'd invite
13 opposing counsel to correct me. It is my
14 understanding that the FBI talked to Captain.
15 Ober on or about about this investigation into
16 alleged influence pedaling or whatever it was in the
17 fall of 1998. Is that square with your recollection
18 calendar?

19 A: I would say that would be pretty accurate.

20 Q: That it was actually the spring of 99 when
21 you have had a conversation with Major Williams
22 about the Commissioner's. Well about the Ober
23 incident with the FBI. That would have been that
24 spring early summer of 99. Is that correct? Cause
25 you said the year 2000. We need to try and

1 A: July of 2000 was when I was transferred
2 down to the Bureau of Liquor Control
3 Enforcement. Prior to that I was the Major or the
4 Captain at Montoursville. During that time I was
5 Captain at Montoursville I had many conversations
6 with Major Williams about a wide variety of things.
7 That's why I have such a difficulty say in the
8 spring I talked about this thing.

9 Q: You do recollect, you have indicated that
10 least one of those conversations was before he was
11 assigned his investigatory duties as per Captain.
12 Ober.

13 A: Yes.

14 Q: It was during that time you recollected he,
15 he being Major Williams, your best recollection is
16 that he had indicated that there was some kind of
17 confidentiality issue there with the FBI.

18 A: There was a claim that the FBI had
19 requested confidentiality yes.

20 Q: Did Major Williams appear to be
21 questioning that or was he assuming that? Do you
22 remember how he treated it? How he appeared to
23 treat that.

24 A: The initial comments on it were simply as a
25 matter of fact as in relating circumstances to a

1 story.

2 Q: Major did he indicate why he came to that
3 conclusion? In other words where did he get the
4 information? Did he say he talked to Captain.
5 Ober? Did he say he talked to the Commissioner,
6 Mr. Coury, Mr. Westcott? Did he say where he got
7 that?

8 A: It is my understanding that the
9 information came from the Commissioner's office
10 or Deputy Westcott.

11 Q: At any time did Mr. Williams indicate to
12 you that he had talked to the FBI?

13 A: I think that at some point they did speak
14 with the FBI during the course of the investigation.

15 Q: Did Mr. Williams ever indicate to you what
16 the FBI said to him?

17 A: I would feel confident that we discussed it,
18 but I don't have a distinct recollection of it.

19 Q: If I told you that I have information I
20 believe to be highly reliable that the FBI did
21 indicate that they have an expectation of
22 confidentiality are any fact known to you that
23 would be in conflict of that?

24 A: No.

25 Q: Secondly whether the FBI asked for,

1 indicated wanted, expressed, cared about, intoned,
2 implied, or overtly requested or not confidentiality.
3 Are you telling us that as a investigator you believe
4 that a investigator's duty is not to tip off a target or
5 potential target regardless of what anyone else
6 does when you knowledge of an investigation? Is
7 that fair to say?

8 A: That is fair to say.

9 Q: They're gonna demote me. I'm gonna get
10 in trouble. With Major Williams, you had
11 discussions with him after he was assigned to do
12 the investigative work right?

13 A: Yes

14 Q: Did he indicate how he came to be
15 assigned? How is occurred? How he learned that
16 he was going to do this job of checking out Mr.
17 Ober?

18 A: My recollection is that he was summoned
19 down to Departmental Headquarter and Colonel
20 Westcott directed an investigation would be
21 conducted headed up by Williams and Wertz.

22 Q: Did you ever talk to Mr. Wertz about he
23 became aware or how he was assigned to this job?

24 A: No never.

25 Q: Did you ever give a statement in the

1 investigation, provide a statement, participate in
2 an interview, or anything like that?

3 A: No

4 Q: Where you ever asked for information
5 about Mr. Ober, yourself?

6 A: At anytime?

7 Q: Sure. I mean did anybody above you in
8 the chain of command or anybody who was
9 investigating Mr. Ober ever ask you for
10 information? I'm not saying it would be improper
11 to do that or implying it would be improper to do
12 that. In fact, I assume that it would probably be
13 good background. I would do it if I were an
14 investigator I know that. I'm just asking if anyone
15 ever came and asked information about Captain.
16 Ober?

17 A: Well late in the process yes I did have on
18 intense.

19 Q: Who was that?

20 A: That was Lt. Colonel Coury.

21 Q: What did he ask you about?

22 A: He asked me first of all he asked me to
23 come over to Departmental Headquarters and met
24 him in his office. Which I did, and he had Dr.
25 Walker, who is the State Police I think he's a

1 Psychologist, so the meeting consisted of Lt.
2 Colonel Coury, Dr. Walker, and me. During that
3 meeting Lt. Colonel Coury asked me if I was seeing
4 signs of distress and stress because of the suit
5 being displayed by Captain. Ober. He told me that
6 he was concerned about reports that he was
7 getting of Captain. Ober, and I don't subscribe to
8 this being his words but, cracking under the
9 pressures that were existing. I don't recall him
10 saying that, but that was the concern. Now I'd
11 like to...I'm not sure the nature of this context, but
12 I was interviewed by Captain. Brown of BPR
13 regarding the internal investigation.

14 JOANNA REYNOLDS: At this point I think I'd
15 like to go off the record because this does involve
16 an attorney work product investigation and even
17 though I think you can as you did with Major
18 Merryman explore that. It's after the witness has
19 to be advised of his rights with regard to that. And
20 so I'm going to ask at this time that we go off the
21 record so that we can advise him.

22 MR BAILEY: First of all I do not want to go off
23 the record. I'm leaving the record open that's
24 number one. I prefer to do it this way. Of Course
25 I will yield to you if you want to go talk to him

1 that's up to him. I just want to make sure.... I
2 object. I believe that this attorney work product
3 thing that has been raised in this case is being
4 used improperly to impede this lawsuit and this
5 proceeding. I express that opinion respectfully. I
6 understand that you the opposing counsel that we
7 have a hopefully respectful difference of opinion on
8 this matter. So the fact situation is clear as my
9 understanding that Mr. Brown was some how
10 selected by someone, and yesterday he said it was
11 Ms. Christi, to be a investigator, supposedly for the
12 attorneys who are employees of the Pennsylvania
13 State Police not Colonel Evanko. Who is an
14 individual defendant as are the other defendant are
15 here of the Pennsylvania State Police not being a
16 part of this action. Number two, that the objection
17 is that some how simply because this fact witness
18 is an employee of the Pennsylvania State Police,
19 and there being no organization, corporation, or
20 other wise involved in this lawsuit. That attorney
21 work product is being used as a barrier to my
22 questioning this fact witness, Major DeWire, about
23 conversations and information that he provided to
24 Mr. Brown. First of all I'll say this and we will
25 break so you can talk to him. So that you can talk

1 to him. If what your saying were correct all an
2 attorney would have to do to control litigation
3 would be to go out hire themselves an investigator,
4 and everybody that investigator talked to raise
5 some kind of objection as if it where a privileged
6 conversation. I don't care if Mr. DeWire had
7 spoken to either one of you two attorneys. That's
8 not privileged and further more the only rule that I
9 can see that might remotely relate to this issue is a
10 rule that, I've said this to federal judges and I don't
11 mind saying it here, that I think was probably
12 written in an insurance company's corporate
13 boardroom. But never the less it is a so called rule
14 of professional conduct in Pennsylvania, cradle of
15 liberty, where and individual who is a member of
16 an organization who's statement would constitute
17 an admission against interest or organizational of
18 that organization who is according to the rule 4.2
19 "a party". That that situation does not exist here.
20 I very much appreciate the opportunity to place
21 this stuff on the record, cause I know we're going
22 to get into a major conflict on it. If counsel has
23 any rejoinder naturally please respond. If not we'll
24 break as per your convenience and you can talk to
25 Mr. DeWire.

1 BARBARA CHRISTI: Basically I would like to
2 break at this time to advise him of his rights.

3 TONY MARCECA: It's 10:42 and the 6th of
4 March. We're taking a break.

5 MR BAILEY: My recorder is on Mr. Marceca.

6 TONY MARCECA: Yes sir.

7 BARBARA CHRISTIE: I would just like

8 MR BAILEY: Wait Wait Wait! He has to put
9 the time on.

10 TONY MARCECA: It's now 10:46, 6TH Of
11 March 2002. We are resuming the deposition of
12 Major Phillip DeWire.

13 MR BAILEY: Joanna

14 JOANNA REYNOLDS: I would just like to put
15 on the record that I have advised my client of his
16 attorney client privilege with regard to any
17 interviews that were done in conjunction with an
18 attorney work product investigation in this case.
19 He has indicated that he is willing to wave that
20 privilege and will testify with regard to that. This
21 does not constitute a waiver by the attorneys for
22 the Pennsylvania State Police and for defendants in
23 this action that we would produce any documents
24 related to that. We would still object to producing
25 any documents related to that investigation,

1 because those are attorney work product
2 documents. And with that understanding the
3 witness is you're free to examine the witness.

4 MR BAILEY: Just so the facts are clear, cause
5 this going to become part of a declaratory
6 judgement, action, or at least a motion. I'm gonna
7 ask you this. At the time the interview took place
8 was there any attorney involved or was this just an
9 investigator, number one?

10 A: Just the investigator.

11 Q: Number two, had you at any time retained
12 or entered into any kind of discussing with any of
13 the attorneys, either Ms. Reynolds or Ms. Christi,
14 asking them to represent you?

15 A: No

16 Q: I understand these counsel for this for
17 your particular testimony waved the objection. So
18 could you just go ahead and answer the question,
19 and what it was simply what did Mr. Brown ask
20 you and what did you tell him?

21 A: Mr. Brown asked me a series of questions
22 about the referring to as the Ober incident.
23 Basically my response to the questions the only
24 response that was of positive nature. I know was
25 concerning an incident in July of 2000 at a time

1 where I was working with Major Kolsnick the
2 departing Director of the Bureau of Liquor
3 Enforcement, prior to my taking over sole
4 command of the bureau. That event involved
5 Major Washington, and Captain. Ober's request
6 turned out to be assigned to fill a position in the
7 Emergency Management.

8 Q: That's PEMA right?

9 A: PEMA

10 Q: Go ahead.

11 A: I wasn't sure until later how it started, but
12 I had received a phone call from Major Washington
13 asking if it was alright with me if they utilized
14 Captain. Ober in that position with PEMA. I said
15 that I had no objection to that. A short time after
16 that, and when I say a short time it may have been
17 an hour maybe longer, I received another phone
18 call from Major Washington who told me not to ask
19 any questions and to forget about the first call. I
20 responded why what's going on, and he said I told
21 you not to ask any questions and that ended the
22 conversation.

23 Q: Any other questions that Mr. Brown asked
24 and your responses to them.

25 A: There were no other questions that unless

1 they were getting information from me.

2 Q: If I could turn to the issue of Mr. Ober's
3 fitness for duty. I understand you testified that at
4 some point you were called over to Lt. Colonel
5 Coury's office.

6 A: Yes

7 Q: Did the, for one of a better description, Lt.
8 Colonel Coury indicated that he, I'm gonna barrow
9 your words now correct me if I'm wrong, he had
10 received reports that Captain. Ober may be
11 cracking under the pressure of his lawsuit. Am I
12 correct that that's pretty much what you had said?

13 A: Pretty much except I don't want to
14 subscribe to the use of the word cracking, but

15 Q: I thought you had used that before. That's
16 why I

17 A: I did.

18 Q: I'm sorry.

19 A: You would have thought I had used that as
20 a general generic term to what occurred.

21 Q: That's not a word that he said?

22 A: That's correct.

23 Q: So you were describing more or less what
24 Lt. Colonel Coury was saying, but you're pointing
25 out to me that Lt. Colonel Coury did not use the

1 word crack or cracking.

2 A: That's correct.

3 Q: Did Lt. Colonel Coury indicate where he
4 got that information? What his sources where?

5 A: No he did not.

6 Q: He hadn't talked to you had he?

7 A: No

8 Q: Cause for what it's worth you get into this
9 business and you get a lot of client, and I sure got
10 a lot of respect for this one. It's hard for me to
11 picture him cracking. I'm gonna get away from
12 using that word cause I don't want to be unfair to
13 you. It's not; did you see any indications that Mr.
14 Ober was some how exhibiting odd, strange,
15 bizarre behavior, or something?

16 A: No I did not. In fact the contrary, he was
17 continuing to do his job in a professional fashion.

18 Q: At any time during the time that you were
19 in Lt. Colonel Coury's office did Mr. Coury ever
20 indicate what. I mean we're gonna depose him
21 later on anyway. So I sure he'll get he word that
22 he's gonna asked this. So hopefully he can come
23 up with this for us. Did he ever indicate where he
24 got this information that Captain. Ober was
25 perhaps suffering problems?

1 A: No

2 Q: Did he ever give you the impression that
3 he was trying to solicit cooperation from you in
4 away that you would support this idea?

5 A: No he never. In fact I left there with the
6 impression that he was expressing a concern for
7 Captain. Ober.

8 Q: A genuine heart felt concern for Captain.
9 Ober. If that's the way he reacted that's fine. Is
10 that the way he reacted?

11 A: That's the message that he conveyed to me.

12 Q: Okay thank you. Was Mr. Walker there?

13 A: Yes

14 Q: Did Mr. Walker ask any questions?

15 A: Yes he did.

16 Q: What did Mr. Walker ask you? This is
17 Larry Walker right?

18 A: I believe that's his first name.

19 Q: And what did he ask you?

20 A: They were question very similar to what
21 Colonel Coury had expressed to me, and they were
22 concerning how Captain Ober was handling the
23 stress. Was I seeing...

24 Q: Can we break for just one second. I think
25 Barb's here and she needs to get in.

1 JOANNA REYNOLDS: I'm sorry I was looking
2 for your camera over here.

3 MR BAILEY: No problem it's okay.

4 JOANNA REYNOLDS: Thanks.

5 MR BAILEY: You can move to put you on
6 camera anytime. Walk right in.

7 JOANNA REYNOLDS: That's all I need now.
8 You want to break your camera? Let's avoid that.

9 MR BAILEY: Okay so we were at a point we
10 were talking about Mr. Walker and I ask you a
11 question about Mr. Walker and you were
12 responding.

13 MAJOR DEWIRE: My reaction was that Dr.
14 Walker and Colonel Coury had discussed what
15 would take place in this conversation prior to my
16 arrival.

17 Q: Do you have recollection of the questions,
18 if any that Mr. Walker asked?

19 A: I don't, no I don't have specific recollection.

20 Q: As in the side, as a Pennsylvania State
21 Policemen, as an employee with the Pennsylvania
22 State Police, there is a considerable amount of
23 internal telephone traffic. Is that correct?

24 A: Yes

25 Q: Is it your understanding as and employee

1 that those telephone lines or telephone
2 conversations can be monitored?

3 A: I don't really know.

4 Q: Have you ever received...

5 A: I would think not

6 Q: You would think not?

7 A: Yeah

8 Q: So you have an expectation of privacy in
9 terms of your conversations with other
10 Pennsylvania State Police personal in your office
11 when you're at work. Is that fair to say?

12 A: Yes

13 Q: So if you pick up the telephone and you
14 call Coronal Coury your expectation is that this is
15 a private, unrecorded, unmonitored telephone
16 conversation. Is that correct?

17 A: That's correct.

18 Q: Was anyone else in the room with you
19 when Lt. Colonel Coury and Mr. Walker where
20 there?

21 A: I don't believe so.

22 Q: Where any notes taken?

23 A: Not by me.

24 Q: Do you have a recollection of whether Mr.
25 Coury took notes?

1 A: I don't think that he did.

2 Q: Do you have a recollection of whether Mr.
3 Walker took notes?

4 A: I have no idea.

5 Q: There were, I assume there were no tape
6 recorders or anything like that?

7 A: Not that I was made aware of.

8 Q: Do you know anyone else, aside from
9 yourself, who was questioned about Mr. Ober's
10 fitness for duty on or around that time?

11 A: No

12 Q: Do you know whether there's a practice in
13 the Pennsylvania State Police to investigate
14 someone for fitness of duty if they sue the
15 department or a superior?

16 A: I don't think that the filing of the suit
17 triggers an investigation for sanity. Is that what
18 you were asking?

19 Q: The question is. I mean I assume that
20 what you're saying is that you don't know of any
21 practice in the Pennsylvania State Police to
22 investigate people simply because they filed a
23 lawsuit.

24 A: Not. No not to investigate the individual.
25 The filling of a lawsuit would trigger an attorney

1 work client privilege document investigation by
2 Internal Affairs. That's why I hesitated.

3 Q: That's why I add up. That begs some
4 question and you're just a little bit ahead of me.
5 Let me ask. Before being called down to Colonel
6 Coury office had you had any inquiries from any
7 one in your chain above you in the chain of
8 command about Captain. Ober's fitness for duty?

9 A: No

10 Q: So when you went over there to Lt. Colonel
11 Coury's office it was like out of the blue. I mean
12 you had no idea that Captain. Ober's fitness for
13 duty was going to be discussed. I assume.

14 A: I had no idea.

15 Q: Have you had similar experiences being
16 called to a Lt. Colonel's office or a Deputy
17 Commissioner's office at that kind of rank and
18 being questioned about a subordinate's fitness for
19 duty?

20 A: No

21 Q: How many years in the Pennsylvania State
22 Police? Thirty years?

23 A: I'm in my thirty-fifth.

24 Q: Thirty-fifth year. Have you ever had cause
25 in your thirty-five years to be concerned about a

1 subordinate's fitness for duty? I don't want you by
2 the way... I'm not gonna ask you for names and I
3 don't want you to state names. I don't like this
4 kind of thing quite frankly. The whole type of thing
5 upsets me very much as a civil liberation. But the
6 point is, what I'm asking you this, have you ever
7 had an occasion. I'm sure it would have been
8 ligament. I don't question your motive. Have you
9 ever an occasion in your thirty-five years to be
10 concerned about the fitness of duty of someone in
11 command? I would assume that you haven't.

12 A: Yes

13 Q: My question is without listing name, my
14 question is what's the process? What do you do
15 when that happens?

16 A: Depends on what the concern is. If it's an
17 immediate concern I have conceivers to take action
18 for an emergency mental commitment for the
19 individual.

20 Q: And there are state laws and regulations
21 that provide for that. Is that correct?

22 A: That's correct.

23 Q: Okay

24 A: If it's less then emergency situation then
25 we have ordered them to submit for independent

1 psychological or medical evaluations by physicians
2 not connected directly to the department.

3 Q: Is it fair to say that when those situations
4 have arisen they have been based on your own
5 observations?

6 A: a number of them, yes.

7 Q: Is it fair to say that in some situations
8 perhaps information was provided to you from
9 different sources. Providing you with concerns,
10 cause you know maybe they're hear say
11 information or someone telling you something. But
12 anyway information is made available to you and
13 you make the best command decision. Is that fair
14 to say?

15 A: That's correct

16 Q: Who does Captain. Ober report to in LCE?

17 A: He reports to me.

18 Q: I'm informing you right now, that Captain.
19 Ober would wave any objection to your sharing
20 information. Did anyone in LCE ever come to you
21 and say that Captain. Ober is having emotional or
22 appears to be emotionally distraight?

23 A: No

24 Q: So aside from what Lt. Colonel Coury told
25 you no one said anything to you, or approached

1 you, or communicated with you any information
2 indicating that Captain. Ober was becoming
3 emotionally distraught or emotionally unfit for duty or
4 whatever?

5 A: That's correct

6 Q: When you went over and talked to Lt.
7 Colonel Coury. I think you already indicated he
8 didn't express any sources of information, but
9 simply said he had received reports. Is that
10 correct?

11 A: That's correct

12 Q: Well, are you familiar with regulation 1-
13 1.102C? Do I have the right number?

14 A: I can't tell you what that is no.

15 Q: That's a little outlandish not only a pretty
16 big regulation, but you folks got regulations that I
17 assume cover a few thousand pages, right?

18 A: A few yeah

19 Q: So much for the unfair effects of the
20 constructed notice. Let me ask this way. Well at
21 chain of command...let's take a hypothetical
22 situation where Lt. Colonel Coury is out on the
23 highway some where and just by virtue of
24 unfortunate events observes Captain. Ober
25 handling a situation. Okay?

1 A: Okay

2 Q: What should he do with that information?
3 Should he report it to you? Should he conduct his
4 own investigation? And let's say he thinks that
5 Captain. Ober is not acting responsible or is not
6 acting reasonable have emotional problems of
7 something. Screaming and shouting or jumping
8 up and down or something in those lines. But
9 anyway what should he do? If you know, what
10 should he do?

11 A: So as I understand the question you're
12 asking what is the responsibility of Colonel Coury?

13 Q: Right

14 A: If he sees Captain Ober acting improperly.

15 Q: Right. The reason I'm asking that question
16 is and what concerns my about what's occurred is
17 that you're called over there. Nobody gives you any
18 background or tells you where's this is coming
19 from or asked you any fact questions. They just
20 ask you a general question about how he's acting.
21 That's what it sounds like to me, and that's what
22 I'm exploring. That's the reason that I am asking,
23 and what I'm asking is and I'm you know being a
24 little bit trying to be funny I guess. This
25 subsection C stuff about chain of command that

1 came into this case in a some what strange
2 fashion. I want to find out if you know, there may
3 not be an answer, if according to Pennsylvania
4 State Police practice or regulation if a superior of
5 yours and Captain. Ober's saw him out there in a
6 bizarre way should they report it to you? You're
7 his Commander should they report it to you?

8 A: Yes

9 Q: No one reported it to you did they?

10 A: No

11 Q: And when you went over for the discussion
12 with Lt. Colonel Coury and Mr. Williams there was
13 not one bit of information shared with you about
14 any fact situation where Captain Ober had
15 allegedly acted in a less then usual or you know
16 typical matter. Is that fair to say?

17 A: You said Mr. Williams you mean Dr.
18 Walker or Mr. Walker?

19 Q: Yes I'm sorry, yes

20 A: Yes your statement is correct. There was
21 no shared information.

22 Q: Did you at anytime ask what's this about
23 or what's this based on? I'm sorry. Did you at
24 anytime ask what's this about or what's this based
25 on during that meeting?

1 A: No not that I recall.

2 Q: How long did this meeting last?

3 A: Five minutes probably.

4 Q: Did anybody say to you "We don't want
5 you to tell Captain. Ober that we brought you over
6 here to ask you about this"?

7 A: No

8 Q: Did you tell Captain. Ober?

9 A: Yes I did.

10 Q: Isn't fair to say that as a Commander, I
11 would assume, you felt that was your duty to tell
12 him?

13 A: Yes

14 Q: Correct. Okay thank you. And you were
15 not requested not to.

16 A: That's correct.

17 Q: Did it ever occur to you that you were used
18 to carry a message a mailed threat of some type
19 back to Captain. Ober?

20 A: Yes that occurred to me.

21 Q: Now, in the complaint references made,
22 one of the complaints that Captain. Ober is making
23 is that he had requested the opportunity to serve
24 with PEMA. I'm gonna ask a few more questions
25 about that, because I know you did get a call from

1 Major Washington. Do you have any recollection of
2 Mr. Ober wanting to, I guess the situation would
3 be reappointed, wanting to be reappointed to
4 PEMA?

5 A: I learned after the phone call that he had
6 expressed the desire to fill that position and that's
7 what had precipitated the chain of events.

8 Q: Okay now here's where I was confused,
9 cause I'm trying to place this PEMA. These two
10 conversations that you had with Major Washington
11 into a sort of a time frame that related to who
12 Captain. Ober's Commander was. Because you
13 had mentioned I believe you had mentioned Major
14 Koselnik

15 A: Koselnik

16 Q: Koselnik. I don't understand. Had you
17 left? I mean had you come to LCE or just replace
18 Mr. Koselnik or what occurred there? How did Mr.
19 Koselnik fit in there?

20 A: Mr. Koselnik was being transferred to the
21 northeast as an area command.

22 Q: Okay

23 A: That position did not open up until
24 approximately a month after I had been promoted
25 to the rank of Major. So the directive was given to

1 me to do two things. To work with the guy who
2 was replacing me as a Captain at Montoursville to
3 show him what to do. And to work with Major
4 Koselnik to learn what he did.

5 Q: Okay that explains for me, answers a lot of
6 questions for me. Did you ever have any
7 conversations with Major Koselnik about the PEMA
8 thing and Captain. Ober?

9 A: Yes

10 Q: Tell me about those conversations.

11 A: Major Koselnak indicated to me that he
12 had made a mistake in approving Captain Ober for
13 that position. And that I would be well advised to
14 not appoint him to any position.

15 Q: Why pray tell?

16 A: Well I could only guess as to what his...

17 Q: Well thirty years experience you're entitled
18 sir to express an opinion as to why. Thirty-five
19 years I'm sorry.

20 A: I felt that he was under some type of a
21 directive not to put Captain. Ober in any position
22 that he really saw, because of the on going lawsuit
23 and the difficulties.

24 Q: He was a Major at that time. Major
25 Koselnak?

1 A: Yes

2 Q: Did Major Koselnak indicate ever having
3 any conversations with anyone above him in the
4 chain of command about Captain. Ober?

5 A: Not that I recall.

6 Q: How under wise is it possible for you to
7 give us a month. If not a month a season of the
8 year when this conversation took place with Major
9 Koselnak?

10 A: I would say in July of 2000.

11 Q: Do you know when the investigation into
12 Captain Ober and the FBI incident when that
13 ended?

14 A: I do not.

15 Q: Do you know if it's ever ended?

16 A: I think that it ended.

17 Q: I mean did it die much like a lead balloon
18 falls slowly over on to it's side and collapses of it's
19 own weigh? Or did somebody say "Hey this
20 investigation is over."?

21 A: The investigations of this type typically end
22 when all the investigative leads have been
23 answered and just an answer.

24 Q: And a report is done?

25 A: And a report is done.

1 Q: Now we've had some testimony I believe
2 about reporting at least verbal reporting and I
3 believe about maybe there's some written reports.
4 Did you ever see anything?

5 A: No

6 Q: Isn't that unusual? Let me ask you before
7 you respond sir. Let me recall let me give you a
8 little offer one to one. I thought when I interviewed
9 Captain. Skurkis yesterday that as Commanding
10 Officer if thing ended somebody would come back
11 to you confusing your command Ober's in your
12 command and review it with you. Now maybe
13 that's wrong. I don't know. One-second sir I need
14 to change this.

15 MR BAILEY: Thank you sir. Again I would
16 offer opposing counsel to correct me. My best
17 recollection or to contribute at least, my best
18 recollection Captain. Skurkis who appears to me to
19 have been quite an expert on the some of the
20 procedures over at BPR and that sort of thing IAD
21 and all that. I thought he had indicated that if an
22 officer is being investigated or a member's being
23 investigated for some thing in the Pennsylvania
24 State Police. When the investigation is concluded
25 that the usual procedure would be to go back to

1 their Commanding Officer and review it or at least
2 talk about. Because the disciplinary decision, if
3 any, would be made by the Commanding Officer.
4 That's what I thought. I may be wrong about that.
5 I don't know. Let me just based on your
6 experience ask you. Number one, for whatever it
7 may be worth, whether it's in accordance with
8 procedure or not whether, I'm right about that I
9 don't know. You've never had anyone come and
10 review the results of the Ober incident
11 investigation with you. Is that fair to say?

12 A: That's correct.

13 Q: Would that normally be done if there were
14 no recommendation of. My understanding is
15 there's a fact investigation done and somebody
16 does adjudicatory process.

17 A: Your understanding...

18 JOANNA REYNOLDS: Just for the record
19 you're assuming that the investigation was
20 completed when Major DeWire was supervising
21 Captain Ober.

22 MR BAILEY: That's correct. I'm for the sake
23 of argument I am assuming that. In other words I
24 don't know if it was over before that. I don't know
25 if anybody knows. God himself may not know. I

1 don't know, but my question is if it ended during
2 the time that you supervised Captain. Ober would
3 it be reviewed with you? Is that the way it is
4 suppose to be done?

5 A: It's fair to say that's normal procedure.

6 Q: I think you'd indicated that you assumed
7 the leadership role and thus supervisor
8 responsibility over Captain. Ober sometime on or
9 about June or July something like that of the year
10 2000. Am I right?

11 A: I would in July probably towards around
12 the 20th or the end of July of 2000.

13 Q: One day before my birthday, good day.
14 Okay the year 2000. Now do you have any
15 knowledge or recollection of an investigation done
16 into Captain. Ober about museum artifacts?

17 A: I don't have any personal knowledge. I
18 heard comments made that might be the limit,
19 extent of my knowledge.

20 Q: Do you have any, as a result of the
21 comments or information shared with you, do you
22 have any time frame for when that investigation
23 began or ended? If you know.

24 A: It seemed to be about the same time as the
25 investigation into the Ober incident. Join in right

1 along at the same time that other one was being
2 conducted.

3 Q: Tony where are you on time with those?

4 TONY MARCECA: I have about forty minutes
5 sir.

6 MR BAILEY: How many?

7 TONY MARCECA: Forty

8 MR BAILEY: OH!! Okay. Is it fair to say that
9 if that investigation if it ended didn't end, I mean,
10 you were not consulted about it. It didn't end
11 during your supervision of Mr. Ober?

12 A: It's fair to say that I didn't even know an
13 official investigation was conducted on the
14 memorabilia issue.

15 Q: Have you ever known of an investigation
16 done off the books? Does that term mean
17 anything?

18 A: Well it would depend on what type of
19 investigation.

20 Q: Do you know of any investigation where
21 somebody including witnesses were read their
22 rights and the matter was not assigned a BPR
23 number?

24 A: Well in the normal course of investigation
25 of the normal offences that's a pretty regular event.

1 But if you're asking in the context of a BPR
2 Internal Affairs investigation.

3 Q: Have you ever directed BPR or been in
4 charge BPR or the Bureau of Professional
5 Responsibility or IAD?

6 A: I was assigned as the Director of the Staff
7 Inspection Division. SPR we called it Staff
8 Inspection we started out. It's one of two divisions
9 with in BPR.

10 Q: Correct

11 A: Filling that role I occasionally filled in on
12 short term temporary bases for the Director of
13 BPR. So never as a permeate assignment but.

14 Q: Major did you ever become aware that
15 Colonel Evanko was angry or upset about how Mr.
16 Ober had handled the FBI probe and if so who
17 expressed that opinion that that him? If you
18 recollect. Aside from Mr. Williams, we've already
19 talked Mr. Williams. I think, and I'm not saying
20 that he said that. Who indicated to you, and I'm
21 not sure I would have to review your testimony,
22 but my question simply is: Did anyone indicate to
23 you that Colonel Evanko was angry about Darrell
24 Ober had handled the FBI probe?

25 A: Other than Major Williams, no not that I

1 recall.

2 Q: Has Colonel Evanko ever discussed Darrell
3 Ober with you?

4 A: No

5 Q: Aside from the incident with Larry Walker
6 has Colonel Coury ever discussed Darrell Ober
7 with you?

8 A: No

9 Q: Has Mr. Westcott?

10 A: No

11 Q: Have you ever had any discussions with
12 Mr. Conley, Hawthorne Conley. Is he a Lt. Colonel
13 now?

14 A: Yes

15 Q: Did you know, yes go ahead.

16 A: I believe that Lt. Colonel Conley has asked
17 how Darrell was doing on occasion. Probably no
18 more then once, twice tops.

19 Q: When?

20 A: See I don't have specific dates, but I would
21 say relatively recently. When I say relatively
22 recently I know that's not very firm. That's the
23 nature of the inquiry it was just in passing and
24 comment has to how is Darrell doing.

25 Q: And it was that innocuous? In other

1 words, it was that, you know, how is he doing?

2 A: Yes

3 Q: There wasn't any definitive questions
4 asked?

5 A: No

6 Q: Do you have a recollection of Major
7 Washington ever indicating having a conversation
8 with Colonel Westcott about Darrell Ober?

9 A: No

10 MR BAILEY: Darrell I'm gonna leave the tape
11 running. Do you just a minute. Remember folks
12 that equipment is still on. I'll only be a second.

13 MR BAILEY: Ladies do you have any
14 questions?

15 JOANNA REYNOLDS: We may.

16 MR BAILEY: Doing something else?

17 JOANNA REYNOLDS: Yes.

18 MR BAILEY: Do you want us to suspend or
19 just? Why don't we just suspend for a minute
20 Tony, cause they maybe want to talk.

21 TONY MARCECA: It's 11:26 a.m.. We are
22 going to suspend.

23 MAJOR DEWIRE: Talking amongst yourselves
24 or do you want me?

25 JOANNA REYNOLDS: No we don't need you

1 Major, thanks.

2 MR BAILEY: Tape recorders are, wait a
3 second. Tony whenever you're ready.

4 TONY MARCECA: It's 11:32, 6 March 2002.
5 We're going to resume the deposition of Major
6 Phillip DeWire, Dewene, DeWire.

7 MR BAILEY: DeWire

8 JOANNA REYNOLDS: I'm not seeing the
9 monitor coming on back there.

10 MR BAILEY: It records up there anyway so it
11 doesn't matter that's on.

12 TONY MARCECA: I believe the tape is out of
13 that sir

14 MR BAILEY: Okay, do you want to put
15 another one in there? It doesn't matter. It's what's
16 in the camera that records it.

17 TONY MARCECA: Let me eject this thing here.

18 MR BAILEY: Here I can do that thing. It's not
19 on, the light right there. Is that on? Did that
20 record?

21 TONY MARCECA: Yes sir I'll know what it is
22 in just a second.

23 MR BAILEY: No I want to see is a...

24 TONY MARCECA: That should go through if
25 a...just a second. It's not recording, and I don't

1 know why.

2 MR BAILEY: Here let me try something.

3 JOANNA REYNOLDS: I think we're going to
4 do this all over again.

5 MR BAILEY: Is that recording? Is that
6 running?

7 TONY MARCECA: This one

8 MR BAILEY: All set it's going. Okay sorry.

9 TONY MARCECA: Put a cartridge in that had
10 the tab knocked out of it.

11 JOANNA REYNOLDS: Do you have to do the
12 time?

13 TONY MARCECA: We're recording and it's 11:
14 36 and we have been on camera for five minutes.

15 JOANNA REYNOLDS: Major DeWire, your
16 decision not to have Captain. Ober be more visible
17 to the front office or engage in activities involving
18 personnel from the front office. Is that based on
19 your own determination, your own conclusions, or
20 was it based on something that was told to you by
21 somebody else?

22 A: It was my own conclusion and own
23 determinations.

24 Q: Did anyone including the Deputies or the
25 Commissioner ever tell not to include Captain.

1 Ober in activities in with they were involved in?

2 A: No

3 Q: Now you indicated that when Colonel
4 Coury called you in and asked you about whether
5 or not you noticed any psychological problems with
6 Captain. Ober that you, and I'm not sure how you
7 phrased this. You can correct me if I have this
8 wrong. That you reached a conclusion that it may
9 have been a veiled threat that you would carry
10 back to Captain. Ober?

11 A: I think that Mr. Bailey asked if I ever
12 concluded that I was delivering a veiled threat.
13 Several days after the meeting with Colonel Coury
14 and Dr. Walker I made Captain. Ober aware of the
15 event and I did that because I did conclude it may
16 have been a veiled threat.

17 Q: Is it possible that Colonel Coury or Lt.
18 Colonel Coury was talking to you to get an
19 independent opinion of you as his Commander
20 whether or not there were any issues regarding his
21 psychological fitness?

22 A: It's very possible.

23 Q: And if Colonel Coury had been presented
24 with rumors or any information with regard to that
25 wouldn't incumbent to check you as his

1 Commander, to verify whether or not there was any
2 bases to that?

3 A: I would say yes.

4 Q: Why didn't you ask Colonel Coury what
5 information that he had that would indicate that
6 there was a potential issue there with regard to
7 fitness for duty?

8 A: I didn't think that it was an issue for me to
9 involve myself in given that I had noted no
10 problems what so ever.

11 Q: You indicated that Agent Williams told you
12 that in this investigation regarding the FBI
13 investigation and what occurred after that with
14 regard to Troop of Stanton that higher ups in the
15 State Police, there was some indication that higher
16 ups may be involved. Is that the term that Major
17 Williams used?

18 MR BAILEY: Objection to characterization.
19 You may respond.

20 MAJOR DEWIRE: My recollection was that
21 the corruption had gone to the highest levels of the
22 State Police.

23 JOANNA REYNOLDS: And that's what Major
24 Williams told you?

25 A: That's what I recall yes.

1 Q: Did you yourself ever review the wiretap
2 tapes or review the FBI investigation and confirm
3 exactly the terms that were used in that
4 investigation?

5 A: No

6 Q: Now in response to a question from Mr.
7 Bailey about what the beef was with regard to
8 Captain. Ober, you indicated that the beef was that
9 Mr. Ober apparently didn't reject out of hand a
10 possibility that Evanko would be involved or could
11 be involved in illegal activity.

12 MR BAILEY: Objection to the form of the
13 question. You may respond.

14 Q: Is that your testimony?

15 A: That's my recollection, yes.

16 Q: And is that your conclusion as to what the
17 beef was?

18 A: That's my conclusion.

19 Q: And that is not something that was related
20 to you by Commissioner Evanko?

21 A: That's correct.

22 Q: And you have not discussed with
23 Commissioner Evanko exactly what his beef was
24 with either Captain. Ober or any other persons
25 that were involved in that investigation?

1 A: That's correct

2 Q: You also indicated that you had a
3 conversation with Major Koselnik when you came
4 into the Bureau of Liquor Control Enforcement or
5 short before you came into the Bureau of Liquor
6 Control Enforcement.

7 MR BAILEY: Objection to the form of the
8 question. You may respond.

9 Q: Do you recall that conversation?

10 A: Yeah, I had many conversations...

11 Q: Okay specifically do you recall testifying
12 about, in this deposition, why you shouldn't
13 appoint Captain. Ober to PEMA?

14 A: Yes

15 Q: And you indicated that you reached a
16 conclusion that he was under some directive, I'm
17 sorry. That Major Koselnik was under some
18 directive not to appoint Captain. Ober to PEMA. Is
19 that correct?

20 MR BAILEY: Objection to the form of the
21 question. You may respond sir.

22 A: I think that's essentially correct, yes

23 Q: And again that was your conclusion based
24 on what Major Koselnik told you?

25 A: That's correct.

1 Q: Did Major Koselnik tell you that he was
2 under some directive not appoint Captain. Ober to
3 PEMA?

4 A: No

5 Q: Did anyone tell you including the Deputies
6 or the Commissioner that they issued a directive
7 that Ober was not to be appointed to PEMA?

8 A: No

9 Q: That's all I have

10 MR BAILEY: Major I'd like to express my
11 gratitude for you coming here today and answer
12 question. I appreciate your courtesy, thank you.

13 MAJOR DEWIRE: I'll stop short of saying it
14 was my pleasure.

15 MR BAILEY: Hold on just one second.

16 TONY MARCECA: It's 11:43 and the
17 deposition of Major DeWire is now concluded.

INDEX

1

attorney work product, 35, 37

BPR, 34, 55, 58

Brown, 34, 35, 38, 39

bureau, 4, 5, 10, 11, 19, 39

Bureau of Liquor Enforcement, 39

Commander, 4, 7, 19, 24, 50, 51, 52, 64

Commanding Officer, 55

Commissioner, 8, 10, 11, 14, 15, 16, 17, 20,
22, 24, 27, 28, 30, 32, 46, 63, 66, 67

Conelly, 59

Coury, 32, 34, 40, 41, 42, 43, 44, 45, 46, 48,
49, 50, 59, 63, 64

Darrell, 1, 4, 5, 9, 11, 12, 13, 21, 59, 60

Deputies, 63, 67

Deputy Commissioners, 22

Evanko, 1, 13, 14, 15, 17, 28, 35, 59, 65, 66

FBI, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32, 54, 59, 64, 65

fitness for duty, 40, 45, 46, 64

Hickes, 22

IAD, 55, 58

Internal Affairs, 45, 58

investigation, 22, 23, 24, 25, 26, 27, 28, 29,
30, 32, 33, 35, 38, 45, 49, 54, 55, 56, 57,
58, 64, 65, 66

Koselnik, 52, 53, 66, 67

Merryman, 35

Ober, 1, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16,
17, 18, 19, 20, 22, 24, 25, 27, 28, 29, 30,
31, 32, 33, 34, 39, 40, 41, 42, 45, 46, 48,
49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,
60, 63, 64, 65, 66, 67

object, 35, 38

objection, 16, 36, 38, 39, 48

PEMA, 39, 52, 53, 66, 67

Pennsylvania State Police, 2, 4, 6, 7, 18, 19,
20, 25, 26, 27, 28, 35, 38, 43, 44, 45, 46,
50, 55

psychological, 47, 63, 64

request for confidentiality, 23, 24, 25

Washington, 39, 52, 60

Wertz, 29, 33

Westcott, 32, 33, 59, 60

Williams, 22, 23, 24, 25, 26, 29, 30, 31, 32,
33, 50, 59, 64, 65

work product investigation, 35, 37